572-B

code of federal regulations

Agriculture

7

PARTS 900 TO 999

Revised as of January 1, 1986

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Agriculture

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PARTS 900 TO 999

Revised as of January 1, 1986

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AS OF JANUARY 1, 1986

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Cite this Code **CFR**

thus: **7 CFR 900.1**

READEX
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Explanation

The Code of Federal Regulations is a codification of the general and permanent rules published in the Federal Register by the Executive departments and agencies of the Federal Government. The Code is divided into 50 titles which represent broad areas subject to Federal regulation. Each title is divided into chapters which usually bear the name of the issuing agency. Each chapter is further subdivided into parts covering specific regulatory areas.

ISSUE DATES

Each volume of the Code is revised at least once each calendar year and issued on a quarterly basis approximately as follows:

Title 1 through Title 16 ..... as of January 1
Title 17 through Title 27 ..... as of April 1
Title 28 through Title 41 ..... as of July 1
Title 42 through Title 50 ..... as of October 1

The appropriate revision date is printed on the cover of each volume.

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The contents of the Federal Register are required to be judicially noticed (44 U.S.C. 1507). The Code of Federal Regulations is prima facie evidence of the text of the original documents (44 U.S.C. 1510).

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The Paperwork Reduction Act of 1980 (Pub. L. 96-511) requires Federal agencies to display an OMB control number with their information collection request. Many agencies have begun publishing numerous OMB control numbers as amendments to existing regulations in the CFR. These OMB numbers are placed as close as possible to the applicable recordkeeping or reporting requirements.

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(b) The matter incorporated is in fact available to the extent necessary to afford fairness and uniformity in the administrative process.

(c) The incorporating document is drafted and submitted for publication in accordance with 1 CFR Part 51.

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III). A list of CFR Titles, Chapters, and Parts and an alphabetical list of agencies publishing in the CFR are also included in this volume.

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JOHN E. BYRNE,
Director,
Office of the Federal Register.

January 2, 1986

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THIS TITLE

Title 7—AGRICULTURE is composed of sixteen volumes. The parts in these volumes are arranged in the following order: Parts 0–45, Parts 46–51, Part 52, Parts 53–209, Parts 210–299, Parts 300–399, Parts 400–699, Parts 700–899, Parts 900–999, Parts 1000–1059, Parts 1060–1119, Parts 1120–1199, Parts 1200–1499, Parts 1500–1899, Parts 1900–1944, and Parts 1945–end. The contents of these volumes represent all current regulations codified under this title of the CFR as of January 1, 1986.

An alphabetical list of U.S. standards for grades of processed fruits, vegetables and certain other products appears in the Finding Aids section of the volume containing Part 52.

The Food and Nutrition Service current regulations in the volume containing Parts 210–299, include the Child Nutrition Programs and the Food Stamp Program. The regulations of the Federal Crop Insurance Corporation are found in the volume containing 400–699.

All marketing agreements and orders for fruits, vegetables and nuts appear in the volume containing Parts 900–999. All marketing agreements and orders for milk appear in the two volumes containing Parts 1000–1199. Part 900—General Regulations is carried as a note in each of the three volumes containing Parts 1000–1199, and Part 1000—General Provisions of Federal Milk Marketing Orders is carried as a note in each of the two volumes containing Parts 1060–1199, as a convenience to the user.

For this volume Abram Primus was Chief Editor. The Code of Federal Regulations publication program is under the direction of Martha B. Girard, assisted by Robert E. Jordan.

Title 7—Agriculture

(This book contains Parts 900 to 999)

SUBTITLE B—REGULATIONS OF THE DEPARTMENT OF AGRICULTURE—(Continued):

Part

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(Marketing Agreements and Orders; Fruits, Vegetables, Nuts),

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SOURCE: 25 FR 5907, June 28, 1960, unless otherwise noted.

EDITORIAL NOTE: For nomenclature changes see 37 FR 8059, Apr. 25, 1972 and 38 FR 29798, Oct. 29, 1973.

Subpart—Rules of Practice and Procedure Governing Proceedings To Formulate Marketing Agreements and Marketing Orders

AUTHORITY: Sec. 10, 48 Stat. 37, as amended; 7 U.S.C. 610.

§ 900.1 Words in the singular form.

Words in this subpart in the singular form shall be deemed to import the plural, and vice versa, as the case may demand.

§ 900.2 Definitions.

As used in this subpart, the terms as defined in the act shall apply with equal force and effect. In addition, unless the context otherwise requires:

(a) The term "Act" means Public Act No. 10, 73 Congress (48 Stat. 31), as amended and as reenacted and amended by the Agricultural Marketing Agreement Act of 1937 (50 Stat. 246), as amended.

(b) The term "Department" means the United States Department of Agriculture.

(c) The term "Secretary" means the Secretary of Agriculture of the United States, or any officer or employee of the Department to whom authority has heretofore been delegated, or to whom authority may hereafter be delegated, to act in his stead.

(d) The terms Administrative Law Judge or Judge means any administrative law judge appointed pursuant to 5 U.S.C. 3105, and assigned to conduct the proceeding.

(e) The term "Administrator" means the Administrator of the Agricultural Marketing Service, with power to redelegate, or any officer or employee of the Department to whom authority has been delegated or may hereafter be delegated to act in his stead.

(f) [Reserved]

(g) The term "FEDERAL REGISTER" means the publication provided for by the act of July 26, 1935 (49 Stat. 500), and acts supplementary thereto and amendatory thereof.

(h) The term "hearing" means that part of the proceeding which involves the submission of evidence.

(i) The term "marketing agreement" means any marketing agreement or any amendment thereto which may be entered into pursuant to section 8b of the act.

(j) The term "marketing order" means any order or any amendment thereto which may be issued pursuant to section 8c of the act, and after notice and hearing as required by said section.

(k) The term "proceeding" means a proceeding upon the basis of which a marketing agreement may be entered into or a marketing order may be issued.

(l) The term "hearing clerk" means the hearing clerk, United States Department of Agriculture, Washington, D.C.

[25 FR 5907, June 28, 1960, as amended at 26 FR 7796, Aug. 22, 1961; 28 FR 579, Jan. 23, 1963; 37 FR 8059, Apr. 25, 1972; 38 FR 29798, Oct. 29, 1973]

§ 900.3 Proposals.

(a) A marketing agreement or a marketing order may be proposed by the Secretary or by any other person. If any person other than the Secretary proposes a marketing agreement or marketing order, he shall file with the Administrator a written application, together with at least four copies of the proposal, requesting the Secretary to hold a hearing upon the proposal. Upon receipt of such proposal, the Administrator shall cause such investigation to be made and such consideration thereof to be given as, in his opinion, are warranted. If the investigation and consideration lead the Administrator to conclude that the proposed marketing agreement or marketing order will not tend to effectuate the declared policy of the act, or that for other proper reasons a hearing should not be held on the proposal, he shall deny the application, and promptly notify the applicant of such denial, which notice shall be accompanied by a brief statement of the grounds for the denial.

(b) If the investigation and consideration lead the Administrator to conclude that the proposed marketing agreement or marketing order will tend to effectuate the declared policy of the act, or if the Secretary desires to propose a marketing agreement or marketing order, he shall sign and cause to be served a notice of hearing, as provided in this subpart.

§ 900.4 Institution of proceeding.

(a) *Filing and contents of the notice of hearing.* The proceeding shall be instituted by filing the notice of hearing with the hearing clerk. The notice of hearing shall contain a reference to the authority under which the marketing agreement or marketing order is proposed; shall define the scope of the hearing as specifically as may be practicable; shall contain either the terms or substance of the proposed marketing agreement or marketing order or a description of the subjects and issues involved and shall state the industry, area, and class of persons to be regulated, the time and place of such hearing, and the place where copies of such proposed marketing agreement or marketing order may be obtained or examined. The time of the hearing shall not be less than 15 days after the date of publication of the notice in the FEDERAL REGISTER, as provided in this subpart, unless the Administrator shall determine that an emergency exists which requires a shorter period of notice, in which case the period of notice shall be that which the Administrator may determine to be reasonable in the circumstances: *Provided*, That, in the case of hearings on amendments to marketing agreements or marketing orders, the time of the hearing may be less than 15 days but shall not be less than 3 days after the date of publication of the notice in the FEDERAL REGISTER.

(b) *Giving notice of hearing and supplemental publicity.* (1) The Administrator shall give or cause to be given notice of hearing in the following manner:

(i) By publication of the notice of hearing in the FEDERAL REGISTER;

(ii) By mailing a true copy of the notice of hearing to each of the persons known to the Administrator, to be interested therein;

(iii) By issuing a press release containing the complete text or a summary of the contents of the notice of hearing and making the same available to such newspapers in the area proposed to be subjected to regulation as reasonably will tend to bring the ntoice to the attention of the persons interested therein;

(iv) By forwarding copies of the notice of hearing addressed to the governors of such of the several States of the United States and to executive heads of such of the Territories and possessions of the United States as the Administrator, having due regard for the subject matter of the proposal and the public interest, shall determine, should be notified.

(2) Legal notice of the hearing shall be deemed to be given if notice is given

in the manner provided by paragraph (b)(1)(i) of this section; and failure to give notice in the manner provided in paragraph (b)(1) (ii), (iii), and (iv) of this section shall not affect the legality of the notice.

(c) *Record of notice and supplemental publicity.* There shall be filed with the hearing clerk or submitted to the judge at the hearing an affidavit or certificate of the person giving the notice provided in paragraph (b)(1) (iii) and (iv) of this section. In regard to the provisions relating to mailing in paragraph (b)(1)(ii) of this section, a determination by the Administrator that such provisions have been complied with shall be filed with the hearing clerk or submitted to the judge at the hearing. In the alternative, if notice is not given in the manner provided in paragraph (b)(1) (ii), (iii), and (iv) of this section there shall be filed with the hearing clerk or submitted to the judge at the hearing a determination by the Administrator that such notice is impracticable, unnecessary, or contrary to the public interest with a brief statement of the reasons for such determination. Determinations by the Administrator as herein provided shall be final.

§ 900.5 Docket number.

Each proceeding, immediately following its institution, shall be assigned a docket number by the hearing clerk and thereafter the proceeding may be referred to by such number.

§ 900.6 Judges.

(a) *Assignment.* No judge who has any pecuniary interest in the outcome of a proceeding shall serve as judge in such proceeding.

(b) *Powers of judges.* Subject to review by the Secretary, as provided elsewhere in this subpart, the judge, in any proceeding, shall have power to:

(1) Rule upon motions and requests;

(2) Change the time and place of hearing, and adjourn the hearing from time to time or from place to place;

(3) Administer oaths and affirmations and take affidavits;

(4) Examine and cross-examine witnesses and receive evidence;

(5) Admit or exclude evidence;

(6) Hear oral argument on facts or law;

(7) Do all acts and take all measures necessary for the maintenance of order at the hearing and the efficient conduct of the proceeding.

(c) *Who may act in absence of judge.* In case of the absence of the judge or his inability to act, the powers and duties to be performed by him under this part in connection with a proceeding may, without abatement of the proceeding unless otherwise ordered by the Secretary, be assigned to any other judge.

(d) *Disqualification of judge.* The judge may at any time withdraw as judge in a proceeding if he deems himself to be disqualified. Upon the filing by an interested person in good faith of a timely and sufficient affidavit of personal bias or disqualification of a judge, the Secretary shall determine the matter as a part of the record and decision in the proceeding, after making such investigation or holding such hearings, or both, as he may deem appropriate in the circumstances.

§ 900.7 Motions and requests.

(a) *General.* All motions and requests shall be filed with the hearing clerk, except that those made during the course of the hearing may be filed with the judge or may be stated orally and made a part of the transcript. Except as provided in § 900.15(b) such motions and requests shall be addressed to, and ruled on by, the presiding officer if made prior to his certification of the transcript pursuant to § 900.10 or by the Secretary if made thereafter.

(b) *Certification to Secretary.* The judge may in his discretion submit or certify to the Secretary for decision any motion, request, objection, or other question addressed to the judge.

§ 900.8 Conduct of the hearing.

(a) *Time and place.* The hearing shall be held at the time and place fixed in the notice of hearing, unless the judge shall have changed the time or place, in which event the judge shall file with the hearing clerk a notice of such change, which notice

shall be given in the same manner as provided in § 900.4 (relating to the giving of notice of the hearing): *Provided,* That, if the change in time or place of hearing is made less than 5 days prior to the date previously fixed for the hearing, the judge, either in addition to or in lieu of causing the notice of the change to be given, shall announce, or cause to be announced, the change at the time and place previously fixed for the hearing.

(b) *Appearances*—(1) *Right to appear.* At the hearing, any interested person shall be given an opportunity to appear, either in person or through his authorized counsel or representative, and to be heard with respect to matters relevant and material to the proceeding. Any interested person who desires to be heard in person at any hearing under these rules shall, before proceeding to testify, state his name, address, and occupation. If any such person is appearing through a counsel or representative, such person or such counsel or representative shall, before proceeding to testify or otherwise to participate in the hearing, state for the record the authority to act as such counsel or representative, and the names and addresses and occupations of such person and such counsel or representative. Any such person or such counsel or representative shall give such other information respecting his appearance as the judge may request.

(2) *Debarment of counsel or representative.* Wherever, while a proceeding is pending before him, the judge finds that a person, acting as counsel or representative for any person participating in the proceeding, is guilty of unethical or unprofessional conduct, the judge may order that such person be precluded from further acting as counsel or representative in such proceeding. An appeal to the Secretary may be taken from any such order, but the proceeding shall not be delayed or suspended pending disposition of the appeal: *Provided,* That the judge may suspend the proceeding for a reasonable time for the purpose of enabling the client to obtain other counsel or other representative. In case the judge has ordered that a person be precluded from further acting as counsel or representative in the proceeding, the presiding officer, within a reasonable time thereafter shall submit to the Secretary a report of the facts and circumstances surrounding such order and shall recommend what action the Secretary should take respecting the appearance of such person as counsel or representative in other proceedings before the Secretary. Thereafter the Secretary may, after notice and an opportunity for hearing, issue such order, respecting the appearance of such person as counsel or representative in proceedings before the Secretary, as the Secretary finds to be appropriate.

(3) *Failure to appear.* If any interested person fails to appear at the hearing, he shall be deemed to have waived the right to be heard in the proceeding.

(c) *Order of procedure.* (1) The judge shall, at the opening of the hearing prior to the taking of testimony, have noted as part of the record the notice of hearing as filed with the Office of the Federal Register and the affidavit or certificate of the giving of notice or the determination provided for in § 900.4(c).

(2) Evidence shall then be received with respect to the matters specified in the notice of the hearing in such order as the judge shall announce.

(d) *Evidence*—(1) *In general.* The hearing shall be publicly conducted, and the testimony given at the hearing shall be reported verbatim.

(i) Every witness shall, before proceeding to testify, be sworn or make affirmation. Cross-examination shall be permitted to the extent required for a full and true disclosure of the facts.

(ii) When necessary, in order to prevent undue prolongation of the hearing, the judge may limit the number of times any witness may testify to the same matter or the amount of corroborative or cumulative evidence.

(iii) The judge shall, insofar as practicable, exclude evidence which is immaterial, irrelevant, or unduly repetitious, or which is not of the sort upon which responsible persons are accustomed to rely.

(2) *Objections.* If a party objects to the admission or rejection of any evi-

dence or to any other ruling of the judge during the hearing, he shall state briefly the grounds of such objection, whereupon an automatic exception will follow if the objection is overruled by the judge. The transcript shall not include argument or debate thereon except as ordered by the judge. The ruling of the judge on any objection shall be a part of the transcript. Only objections made before the judge may subsequently be relied upon in the proceeding.

(3) *Proof and authentication of official records or documents.* An official record or document, when admissible for any purpose, shall be admissible as evidence without the production of the person who made or prepared the same. Such record or document shall, in the discretion of the judge, be evidenced by an official publication thereof or by a copy attested by the person having legal custody thereof and accompanied by a certificate that such person has the custody.

(4) *Exhibits.* All written statements, charts, tabulations, or similar data offered in evidence at the hearing shall, after identification by the proponent and upon satisfactory showing of the authenticity, relevancy, and materiality of the contents thereof, be numbered as exhibits and received in evidence and made a part of the record. Such exhibits shall be submitted in quadruplicate and in documentary form. In case the required number of copies is not made available, the judge shall exercise his discretion as to whether said exhibits shall, when practicable, be read in evidence or whether additional copies shall be required to be submitted within a time to be specified by the judge. If the testimony of a witness refers to a statute, or to a report or document (including the record of any previous hearing) the judge, after inquiry relating to the identification of such statute, report, or document, shall determine whether the same shall be produced at the hearing and physically be made a part of the evidence as an exhibit, or whether it shall be incorporated into the evidence by reference. If relevant and material matter offered in evidence is embraced in a report or document (including the record of any previous hearing) containing immaterial or irrelevant matter, such immaterial or irrelevant matter shall be excluded and shall be segregated insofar as practicable, subject to the direction of the presiding officer.

(5) *Official notice.* Official notice may be taken of such matters as are judicially noticed by the courts of the United States and of any other matter of technical, scientific or commercial fact of established character: *Provided,* That interested persons shall be given adequate notice, at the hearing or subsequent thereto, of matters so noticed and shall be given adequate opportunity to show that such facts are inaccurate or are erroneously noticed.

(6) *Offer of proof.* Whenever evidence is excluded from the record, the party offering such evidence may make an offer of proof, which shall be included in the transcript. The offer of proof shall consist of a brief statement describing the evidence to be offered. If the evidence consists of a brief oral statement or of an exhibit, it shall be inserted into the transcript in toto. In such event, it shall be considered a part of the transcript if the Secretary decides that the judge's ruling in excluding the evidence was erroneous. The judge shall not allow the insertion of such evidence in toto if the taking of such evidence will consume a considerable length of time at the hearing. In the latter event, if the Secretary decides that the judge erred in excluding the evidence, and that such error was substantial, the hearing shall be reopened to permit the taking of such evidence.

[25 FR 5907, June 28, 1960, as amended at 37 FR 1103, Jan. 25, 1972]

§ 900.9 Oral and written arguments.

(a) *Oral argument before judge.* Oral argument before the judge shall be in the discretion of the judge. Such argument, when permitted, may be limited by the judge to any extent that he finds necessary for the expeditious disposition of the proceeding and shall be reduced to writing and made part of the transcript.

(b) *Briefs, proposed findings and conclusions.* The judge shall announce

at the hearing a reasonable period of time within which interested persons may file with the hearing clerk proposed findings and conclusions, and written arguments or briefs, based upon the evidence received at the hearing, citing, where practicable, the page or pages of the transcript of the testimony where such evidence appears. Factual material other than that adduced at the hearing or subject to official notice shall not be alluded to therein, and, in any case, shall not be considered in the formulation of the marketing agreement or marketing order. If the person filing a brief desires the Secretary to consider any objection made by such person to a ruling of the judge, as provided in § 900.8(d), he shall include in the brief a concise statement concerning each such objection, referring where practicable, to the pertinent pages of the transcript.

§ 900.10 Certification of the transcript.

The judge shall notify the hearing clerk of the close of a hearing as soon as possible thereafter and of the time for filing written arguments, briefs, proposed findings and proposed conclusions, and shall furnish the hearing clerk with such other information as may be necessary. As soon as possible after the hearing, the judge shall transmit to the hearing clerk an original and three copies of the transcript of the testimony and the original and all copies of the exhibits not already on file in the office of the hearing clerk. He shall attach to the original transcript of testimony his certificate stating that, to the best of his knowledge and belief, the transcript is a true transcript of the testimony given at the hearing except in such particulars as he shall specify; and that the exhibits transmitted are all the exhibits as introduced at the hearing with such exceptions as he shall specify. A copy of such certificate shall be attached to each of the copies of the transcript of testimony. In accordance with such certificate the hearing clerk shall note upon the official record copy, and cause to be noted on other copies, of the transcript each correction detailed therein by adding or crossing out (but without obscuring the text as originally transcribed) at the appropriate place any words necessary to make the same conform to the correct meaning, as certified by the judge. The hearing clerk shall obtain and file certifications to the effect that such corrections have been effected in copies other than the official record copy.

§ 900.11 Copies of the transcript.

(a) During the period in which the proceeding has an active status in the Department, a copy of the transcript and exhibits shall be kept on file in the office of the hearing clerk, where it shall be available for examination during official hours of business. Thereafter said transcript and exhibits shall be made available by the hearing clerk for examination during official hours of business after prior request and reasonable notice to the hearing clerk.

(b) If a personal copy of the transcript is desired, such copy may be obtained upon written application filed with the reporter and upon payment of fees at the rate (if any) provided in the contract between the reporter and the Secretary.

§ 900.12 Administrator's recommended decision.

(a) *Preparation.* As soon as practicable following the termination of the period allowed for the filing of written arguments or briefs and proposed findings and conclusions the Administrator shall file with the hearing clerk a recommended decision.

(b) *Contents.* The Administrator's recommended decision shall include: (1) A preliminary statement containing a description of the history of the proceedings, a brief explanation of the material issues of fact, law, or discretion presented on the record, and proposed findings and conclusions with respect to such issues as well as the reasons or basis therefor; (2) a ruling upon each proposed finding or conclusion submitted by interested persons, and (3) an appropriate proposed marketing agreement or marketing order effectuating his recommendations.

(c) *Exceptions to recommended decision.* Immediately following the filing of his recommended decision, the Ad-

ministrator shall give notice thereof, and opportunity to file exceptions thereto by publication in the FEDERAL REGISTER. Within a period of time specified in such notice any interested person may file with the hearing clerk exceptions to the Administrator's proposed marketing agreement or marketing order, or both, as the case may be, and a brief in support of such exceptions. Such exceptions shall be in writing, shall refer, where practicable, to the related pages of the transcript and may suggest appropriate changes in the proposed marketing agreement or marketing order.

(d) *Omission of recommended decision.* The procedure provided in this section may be omitted only if the Secretary finds on the basis of the record that due and timely execution of his functions imperatively and unavoidably requires such omission.

§ 900.13 Submission to Secretary.

Upon the expiration of the period allowed for filing exceptions or upon request of the Secretary, the hearing clerk shall transmit to the Secretary the record of the proceeding. Such record shall include: All motions and requests filed with the hearing clerk and rulings thereon; the certified transcript; any proposed findings or conclusions or written arguments or briefs that may have been filed; the Administrator's recommended decision, if any, and such exceptions as may have been filed.

§ 900.13a Decision by Secretary.

After due consideration of the record, the Secretary shall render a decision. Such decision shall become a part of the record and shall include: (a) A statement of his findings and conclusions, as well as the reasons or basis therefor, upon all the material issues of fact, law or discretion presented on the record, (b) a ruling upon each proposed finding and proposed conclusion not previously ruled upon in the record, (c) a ruling upon each exception filed by interested persons and (d) either (1) a denial of the proposal to issue a marketing agreement or marketing order or (2) a marketing agreement and, if the findings upon the record so warrant, a marketing order, the provisions of which shall be set forth directly or by reference, regulating the handling of the commodity or product in the same manner and to the same extent as such marketing agreement, which order shall be complete except for its effective date and any determinations to be made under § 900.14(b) or § 900.14(c): *Provided,* That such marketing order shall not be executed, issued, or made effective until and unless the Secretary determines that the requirements of § 900.14(b) or § 900.14(c) have been met.

§ 900.14 Execution of marketing agreement and issuance of marketing order.

(a) *Execution of marketing agreement.* If the Secretary has approved a marketing agreement, as provided in § 900.13a, the Administrator shall cause copies thereof to be distributed for execution by the handlers eligible to become parties thereto. If and when such number of the handlers as the Secretary shall deem to be sufficient shall have executed the marketing agreement, the Secretary shall execute the same, and notice of its effective date shall be mailed by the hearing clerk to each person signatory thereto. A marketing agreement shall be effective and binding upon any party thereto even though such party may not have received the notice provided for in this paragraph, or the hearing clerk may have failed to mail such notice.

(b) *Issuance of marketing order with marketing agreement.* Whenever, as provided in paragraph (a) of this section, the Secretary executes a marketing agreement, and handlers also have executed the same as provided in section 8c(8) of the Act, he shall, if he finds that it will tend to effectuate the purposes of the Act, issue and make effective the marketing order, if any, which was filed as a part of his decision pursuant to § 900.13a: *Provided,* That the issuance of such order shall have been approved or favored by producers as required by section 8c(8) of the act.

(c) *Issuance of marketing order without marketing agreement.* If, despite the failure or refusal of handlers to

sign the marketing agreement, as provided in section 8c(8) of the Act, the Secretary makes the determinations required under section 8c(9) of the Act, the Secretary shall issue and make effective the marketing order, if any, which was filed as a part of his decision pursuant to § 900.13a.

(d) *Effective date of marketing order.* No marketing order shall become effective less than 30 days after its publication in the FEDERAL REGISTER, unless the Secretary, upon good cause found and published with the order, fixes an earlier effective date therefor: *Provided,* That no marketing order shall become effective as to any person sought to be charged thereunder before either (1) it has been filed with the Office of the Federal Register, or (2) such person has received actual notice of the issuance and terms of the marketing order.

(e) *Notice of issuance.* After issuance of a marketing order, such order shall be filed with the hearing clerk, and notice therof, together with notice of the effective date, shall be given by publication in the FEDERAL REGISTER. (7 U.S.C. 610(c).)

§ 900.15 Filing; extensions of time; effective date of filing; and computation of time.

(a) *Filing, number of copies.* Except as is provided otherwise in this subpart, all documents or papers required or authorized by the foregoing provisions of this subpart to be filed with the hearing clerk shall be filed in quadruplicate. Any document or paper, so required or authorized to be filed with the hearing clerk, shall, during the course of an oral hearing, be filed with the presiding officer. The provisions of this subpart concerning filing with the hearing clerk of hearing notices, recommended and final decisions, marketing agreements and orders, and all documents described in § 900.17 shall be met by filing a true copy thereof with the hearing clerk.

(b) *Extensions of time.* The time for the filing of any document or paper required or authorized by the foregoing provisions of this subpart to be filed may be extended by the judge before the record is certified by the judge or by the Administrator (after the record is so certified by the judge but before it is transmitted to the Secretary), or by the Secretary (after the record is transmitted to the Secretary) upon request filed, and if, in the judgment of the judge, Administrator, or the Secretary, as the case may be, there is good reason for the extension. All rulings made pursuant to this paragraph shall be filed with the hearing clerk.

(c) *Effective date of filing.* Any document or paper required or authorized by the foregoing provisions of this subpart to be filed shall be deemed to be filed when it is postmarked or when it is received by the hearing clerk.

(d) *Computation of time.* Sundays and Federal holidays shall be included in computing the time allowed for the filing of any document or paper: *Provided,* That, when such time expires on a Sunday or legal holiday, such period shall be extended to include the next following business day.

[25 FR 5907, June 28, 1960, as amended at 30 FR 254, Jan. 9, 1965]

§ 900.16 Ex parte communications.

(a) At no stage of the proceeding following the issuance of a notice of hearing and prior to the issuance of the Secretary's decision therein shall an employee of the Department who is or may reasonably be expected to be involved in the decisional process of the proceeding discuss ex parte the merits of the proceeding with any person having an interest in the proceeding or with any representative of such person: *Provided,* That procedural matters and status reports shall not be included within this limitation; and *Provided further,* That an employee of the Department who is or may reasonably be expected to be involved in the decisional process of the proceeding may discuss the merits of the proceeding with such a person if all parties known to be interested in the proceeding have been given notice and an opportunity to participate. A memorandum of any such discussion shall be included in the record of the proceeding.

(b) No person interested in the proceeding shall make or knowingly cause to be made to an employee of the Department who is or may reasonably be

expected to be involved in the decisional process of the proceeding an ex parte communication relevant to the merits of the proceeding except as provided in paragraph (a) of this section.

(c) If an employee of the Department who is or may reasonably be expected to be involved in the decisional process of the proceeding receives or makes a communication prohibited by this section, the Department shall place on the public record of the proceeding:

(1) All such written communications;

(2) Memoranda stating the substance of all such oral communications; and

(3) All written responses, and memoranda stating the substance of all oral responses thereto.

(d) Upon receipt of a communication knowingly made or knowingly caused to be made by a party in violation of this section, the Department may, to the extent consistent with the interest of justice and the policy of the underlying statute, take whatever steps are deemed necessary to nullify the effect of such communication.

(e) For the purposes of this section, "ex parte communication" means an oral or written communication not on the public record with respect to which reasonable prior notice to all interested parties is not given, but which shall not include requets for status reports (including requests on procedural matters) on any proceeding.

[42 FR 10833, Feb. 24, 1977]

§ 900.17 Additional documents to be filed with hearing clerk.

In addition to the documents or papers required or authorized by the foregoing provisions of this subpart to be filed with the hearing clerk, the hearing clerk shall receive for filing and shall have custody of all papers, reports, records, orders, and other documents which relate to the administration of any marketing agreement or marketing order and which the Secretary is required to issue or to approve.

§ 900.18 Hearing before Secretary.

The Secretary may act in the place and stead of a judge in any proceeding under this subpart. When he so acts the hearing clerk shall transmit the record to the Secretary at the expiration of the period provided for the filing of proposed findings of fact, conclusions and orders, and the Secretary shall thereupon, after due consideration of the record, issue his final decision in the proceeding: *Provided,* That he may issue a tentative decision in which event the parties shall be afforded an opportunity to file exceptions before the issuance of the final decision.

Subpart—Rules of Practice Governing Proceedings on Petitions To Modify or To Be Exempted From Marketing Orders

AUTHORITY: Sec. 5, 49 Stat. 753, as amended; 7 U.S.C. 608c.

§ 900.50 Words in the singular form.

Words in this subpart in the singular form shall be deemed to import the plural, and vice versa, as the case may demand.

§ 900.51 Definitions.

As used in this subpart, the terms as defined in the act shall apply with equal force and effect. In addition, unless the context otherwise requires:

(a) The term "act" means Public Act No. 10, 73d Congress, as amended and as reenacted and amended by the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. and Sup. 601);

(b) The term "Department" means the United States Department of Agriculture;

(c) The term "Secretary" means the Secretary of Agriculture of the United States, or any officer or employee of the Department to whom authority has heretofore been delegated, or to whom authority may hereafter be delegated, to act in his stead;

(d) The terms "administrative law judge" or "judge" means any Administrative Law Judge, appointed pursuant to 5 U.S.C. 3105, and assigned to the proceeding involved;

(e) The term "Administrator" means the Administrator of the Agricultural Marketing Service, with power to redelegate, or any officer or employee of the Department to whom authority

has been delegated or may hereafter be delegated to act in his stead.

(f) [Reserved]

(g) The term "FEDERAL REGISTER" means the publication provided for by the act of July 26, 1935 (49 Stat. 500), and acts supplementary thereto and amendatory thereof;

(h) The term "marketing order" means any order or any amendment thereto which may be issued pursuant to section 8c of the act;

(i) The term "handler" means any person who, by the terms of a marketing order, is subject thereto, or to whom a marketing order is sought to be made applicable;

(j) The term "proceeding" means a proceeding before the Secretary arising under subsection (15)(A) of section 8c of the act;

(k) The term "hearing" means that part of the proceeding which involves the submission of evidence;

(l) The term "party" includes the Department;

(m) The term "hearing clerk" means the hearing clerk, United States Department of Agriculture, Washington, D.C.;

(n) [Reserved]

(o) The term "decision" means the judge's initial decision in proceedings subject to 5 U.S.C. 556 and 557, and includes the judge's (1) findings of fact and conclusions with respect to all material issues of fact, law or discretion as well as the reasons or basis thereof, (2) order, and (3) rules on findings, conclusions and orders submitted by the parties;

(p) The term "petition" includes an amended petition.

[25 FR 5907, June 28, 1960, as amended at 26 FR 7796, Aug. 22, 1961; 28 FR 579, Jan. 23, 1963; 37 FR 8059, Apr. 25, 1972; 38 FR 29798, Oct. 29, 1973]

§ 900.52 Institution of proceeding.

(a) *Filing and service of petition.* Any handler desiring to complain that any marketing order or any provision of any such order or any obligation imposed in connection therewith is not in accordance with law, shall file with the hearing clerk, in quadruplicate, a petition in writing addressed to the Secretary. Promptly upon receipt of the petition, the hearing clerk shall transmit a true copy thereof to the Administrator and the General Counsel, respectively.

(b) *Contents of petition.* A petition shall contain:

(1) The correct name, address, and principal place of business of the petitioner. If petitioner is a corporation, such fact shall be stated, together with the name of the State of incorporation, the date of incorporation, and the names, addresses, and respective positions held by its officers; if an unincorporated association, the names and addresses of its officers, and the respective positions held by them; if a partnership, the name and address of each partner;

(2) Reference to the specific terms or provisions of the order, or the interpretation or application thereof, which are complained of;

(3) A full statement of the facts (avoiding a mere repetition of detailed evidence) upon which the petition is based, and which it is desired that the Secretary consider, setting forth clearly and concisely the nature of the petitioner's business and the manner in which petitioner claims to be affected by the terms or provisions of the order, or the interpretation or application thereof, which are complained of;

(4) A statement of the grounds on which the terms or provisions of the order, or the interpretation or application thereof, which are complained of, are challenged as not in accordance with law;

(5) Prayers for the specific relief which the petitioner desires the Secretary to grant;

(6) An affidavit by the petitioner, or, if the petitioner is not an individual, by an officer of the petitioner having knowledge of the facts stated in the petition, verifying the petition and stating that it is filed in good faith and not for purposes of delay.

(c) *Motion to dismiss petition—(1) Filing, contents, and responses thereto.* If the Administrator is of the opinion that the petition, or any portion thereof, does not substantially comply, in form or content, with the act or with the requirements of paragraph (b) of this section, or is not filed in good faith, or is filed for purposes of delay, he may, within thirty days after

the filing of the petition, file with the Hearing Clerk a motion to dismiss the petition, or any portion thereof, on one or more of the grounds stated in this paragraph. Such motion shall specify the grounds of objection to the petition and if based, in whole or in part, on an allegation of fact not appearing on the face of the petition, shall be accompanied by appropriate affidavits or documentary evidence substantiating such allegations of fact. The motion may be accompanied by a memorandum of law. Upon receipt of such motion, the Hearing Clerk shall cause a copy thereof to be served upon the petitioner, together with a notice stating that all papers to be submitted in opposition to such motion including any memorandum of law, must be filed by the petitioner with the hearing clerk not later than 20 days after the service of such notice upon the petitioner. Upon the expiration of the time specified in such notice, or upon receipt of such papers from the petitioner, the hearing clerk shall transmit all papers which have been filed in connection with the motion to the Judge for his consideration.

(2) *Decision by Administrative Law Judge.* The Judge, after due consideration, shall render a decision upon the motion stating the reasons for his action. Such decision shall be in the form of an order and shall be filed with the hearing clerk who shall cause a copy thereof to be served upon the petitioner and a copy thereof to be transmitted to the Administrator. Any such order shall be final unless appealed pursuant to § 900.65: *Provided,* That within 20 days following the service upon the petitioner of a copy of the order of the Judge dismissing the petition, or any portion thereof, on the ground that it does not substantially comply in form and content with the act or with paragraph (b) of this section, the petitioner shall be permitted to file an amended petition.

(3) *Oral argument.* Unless a written application for oral argument is filed by a party with the hearing clerk not later than the time fixed for filing papers in opposition to the motion, it shall be considered that the party does not desire oral argument. The granting of a request to make oral argument shall rest in the discretion of the Judge.

[25 FR 5907, June 28, 1960, as amended at 38 FR 29798, Oct. 29, 1973]

§ 900.52a Answer to petition.

(a) *Time of filing.* Within 30 days after the filing of the petition, the Administrator shall file an answer thereto: *Provided,* That if a motion to dismiss the petition, in whole or in part, is made pursuant to § 900.52(c), the answer shall be filed within 15 days after the filing of an order of the administrative law judge denying the motion or granting the motion with respect to only a portion of the petition. The answer shall be filed with the hearing clerk who shall cause a copy thereof to be served promptly upon the petitioner.

(b) *Contents.* The answer shall specify which of the material allegations of fact or of law in the petition are controverted and which are not controverted. The answer also may contain affirmative allegations of fact constituting separate defenses and statements of objections to the sufficiency of the whole or any part of the petition.

[25 FR 5907, June 28, 1960, as amended at 38 FR 29798, Oct. 29, 1973]

§ 900.52b Amended pleadings.

At any time before the close of the hearing the petition or answer may be amended, but the hearing shall, at the request of the adverse party, be adjourned or recessed for such reasonable time as the judge may determine to be necessary to protect the interests of the parties. Amendments subsequent to the first amendment or subsequent to the filing of an answer may be made only with leave of the judge or with the written consent of the adverse party.

§ 900.53 Withdrawal of petition.

If, at any time after the petition is filed, the petitioner desires to withdraw the same, he shall file with the hearing clerk (or, if filed during the course of a hearing, with the judge) a written request for permission to withdraw. The judge may, in his discretion, thereupon dismiss the petition with-

out further procedure: *Provided*, That, if the request to withdraw is filed after a hearing has been opened, permission to withdraw shall be granted only in exceptional circumstances.

§ 900.54 Docket number.

Each proceeding, immediately following its institution, shall be assigned a docket number by the hearing clerk and thereafter the proceeding may be referred to by such number.

§ 900.55 Judges.

(a) *Assignment.* No judge who has any pecuniary interest in the outcome of the proceeding, or who has participated in any investigation preceding the institution of the proceeding, shall serve as judge in such proceeding.

(b) *Conduct.* The judge shall conduct the proceeding in a fair and impartial manner and shall not discuss ex parte the merits of the proceeding with any person who is or who has been connected in any manner with the proceeding in an advocative or investigative capacity.

(c) *Powers of judges.* Subject to review by the Secretary, as provided elsewhere in this subpart, the judge shall have power to:

(1) Rule upon motions and requests;

(2) Adjourn the hearing from time to time, and change the time and place of hearing;

(3) Administer oaths and affirmations and take affidavits;

(4) Issue subpenas, under the facsimile signature of the Secretary, requiring the attendance and testimony of witnesses and the production of books, records, contracts, papers, and other documentary evidence;

(5) Examine witnesses and receive evidence;

(6) Take or order, under the facsimile signature of the Secretary, the taking of depositions;

(7) Admit or exclude evidence;

(8) Hear oral argument on facts or law;

(9) Consolidate hearings upon two or more petitions pertaining to the same order;

(10) Do all acts and take all measures necessary for the maintenance of order at the hearing and the efficient conduct of the proceeding.

(d) *Who may act in absence of judge.* In case of the absence of the judge or his inability to act, the powers and duties to be performed by him under these rules of practice in connection with a proceeding may, without abatement of the proceeding unless otherwise ordered by the Secretary, be assigned to any other judge.

(e) *Disqualification of judge.* The judge may at any time withdraw as judge in a proceeding if he deems himself to be disqualified. Upon the filing by an interested person in good faith of a timely and sufficient affidavit of personal bias or disqualification of a judge, the Secretary shall determine the matter as a part of the record and decision in the proceeding, after making such investigation or holding such hearings, or both, as he may deem appropriate in the circumstances.

§ 900.56 Consolidated hearings.

At the discretion of the judge, hearings upon two or more petitions pertaining to the same order may be consolidated, and the evidence taken at such consolidated hearing may be embodied in a single record.

§ 900.57 Intervention.

Intervention in proceedings subject to this subpart shall not be allowed, except that, in the discretion of the Secretary or the judge, any person (other than the petitioner) showing a substantial interest in the outcome of a proceeding shall be permitted to participate in the oral argument and to file a brief.

§ 900.58 Prehearing conferences.

In any proceeding in which it appears that such procedure will expedite the proceeding, the judge, at any time prior to the commencement of or during the course of the hearing, may request the parties or their counsel to appear at a conference before him to consider (a) the simplification of issues; (b) the possibility of obtaining stipulations of fact and of documents which will avoid unnecessary proof; (c) the limitation of the number of expert or other witnesses; and (d) such other matters as may expedite and aid in the

disposition of the proceeding. No transcript of such conference shall be made, but the judge shall prepare and file for the record a written summary of the action taken at the conference, which shall incorporate any written stipulations or agreements made by the parties at the conference or as a result of the conference. If the circumstances are such that a conference is impracticable, the judge may request the parties to correspond with him for the purpose of accomplishing any of the objects set forth in this section. The judge shall forward copies of letters and documents to the parties as the circumstances require. Correspondence in such negotiations shall not be a part of the record, but the judge shall submit a written summary for the record if any action is taken.

§ 900.59 Motions and requests.

(a) *General.* (1) All motions and requests shall be filed with the hearing clerk, except that those made during the course of an oral hearing may be filed with the judge or may be stated orally and made a part of the transcript.

(2) The judge is authorized to rule upon all motions and requests filed or made prior to the transmittal by the hearing clerk to the Secretary of the record as provided in this subpart. The Secretary shall rule upon all motions and requests filed after that time.

(b) *Certification of motions.* The submission or certification of any motion, request, objection, or other question to the Secretary, as provided in this subpart, shall be in the discretion of the judge.

[25 FR 5907, June 28, 1960, as amended at 38 FR 29798, Oct. 29, 1973]

§ 900.60 Oral hearings before judge.

(a) *Time and place.* The judge shall set a time and place for hearing and shall file with the hearing clerk a notice stating the time and place of hearing. If any change in the time or place of hearing becomes necessary, it shall be made by the judge, who, in such event, shall file with the hearing clerk a notice of the change. Such notice shall be served upon the parties, unless it is made during the course of an oral hearing and made a part of the transcript.

(b) *Appearances*—(1) *Representation.* In any proceeding under the act, the parties may appear in person or by counsel or other representative. The Department, if represented by counsel, shall be represented by an attorney assigned by the General Counsel of the Department, and such attorney shall present or supervise the presentation of the position of the Department.

(2) *Debarment of counsel or representative.* Whenever, while a proceeding is pending before him, the judge finds that a person acting as counsel or representative for any party to the proceeding is guilty of unethical or unprofessional conduct, the judge may order that such person be precluded from further acting as counsel or representative in such proceeding. An appeal to the Secretary may be taken from any such order, but the proceeding shall not be delayed or suspended pending disposition of the appeal: *Provided,* That the judge may suspend the proceeding for a reasonable time for the purpose of enabling the client to obtain other counsel or representative. In case the judge has issued an order precluding a person from further acting as counsel or representative in the proceeding, the judge, within a reasonable time thereafter, shall submit to the Secretary a report of the facts and circumstances surrounding the issuance of the order and shall recommend what action the Secretary should take respecting the appearance of such person as counsel or representative in other proceedings before the Secretary. Thereafter, the Secretary may, after notice and an opportunity for hearing, issue such order respecting the appearance of such person as counsel or representative in proceedings before the Secretary as the Secretary finds to be appropriate.

(3) *Failure to appear.* If the petitioner, after being duly notified, fails to appear at the hearing, he shall be deemed to have authorized the dismissal of the proceeding, without further procedure, and with or without prejudice as the judge may determine. In the event that the petitioner appears at the hearing and no representative of the Department appears, the judge

shall proceed ex parte to hear the evidence of the petitioner. *Provided,* That failure on the part of such representative of the Department to appear at a hearing shall not be deemed to be waiver of the Department's right to file suggested findings of fact, conclusions and order; to be served with a copy of the judge's initial decision and to appeal to the Secretary with respect thereto.

(c) *Order of proceeding.* Except as may be determined otherwise by the judge, the petitioner shall proceed first at the hearing.

(d) *Evidence*—(1) *In general.* The hearing shall be publicly conducted, and the testimony given at the hearing shall be reported verbatim.

(i) The testimony of witnesses at a hearing shall be upon oath or affirmation and subject to cross-examination.

(ii) Any witness may, in the discretion of the judge, be examined separately and apart from all other witnesses except those who may be parties to the proceeding.

(iii) The judge shall exclude, insofar as practicable, evidence which is immaterial, irrelevant, or unduly repetitious, or which is not of the sort upon which responsible persons are accustomed to rely.

(2) *Objections.* If a party objects to the admission or rejection of any evidence or to the limitation of the scope of any examination or cross-examination, or any other ruling of the judge, he shall state briefly the grounds of such objection, whereupon an automatic exception will follow which may be pursued in an appeal pursuant to § 900.65 by the party adversely affected by the judge's ruling.

(3) *Depositions.* The deposition of any witness shall be admitted, in the manner hereinafter provided in and subject to the provisions of § 900.61.

(4) *Affidavits.* Except as is otherwise provided in this subpart, affidavits may be admitted only if the evidence is otherwise admissible and the parties agree (which may be determined by their failure to make timely objections) that affidavits may be used.

(5) *Proof and authentication of official records or documents.* An official record or document, when admissible for any purpose, shall be admissible in evidence without the production of the person who made or prepared the same. Such record or document shall, in the discretion of the judge, be evidenced by an official publication thereof or by a copy attested by the person having legal custody thereof and accompanied by a certificate that such person has the custody.

(6) *Exhibits.* All written statements, charts, tabulations, or similar data offered in evidence at the hearing shall, after identification by the proponent and upon a satisfactory showing of the admissibility of the contents thereof, be numbered as exhibits and received in evidence and made a part of the record. Except where the judge finds that the furnishing of copies is impracticable, a copy of each exhibit, in addition to the original, shall be filed with the judge for the use of each other party to the proceeding. The judge shall advise the parties as to the exact number of copies which will be required to be filed and shall make and have noted on the record the proper distribution of the copies. If the testimony of a witness refers to a statute, or to a report, document, or transcript, the judge, after inquiry relating to the identification of such statute, report, document, or transcript, shall determine whether the same shall be produced at the hearing and physically be made a part of the evidence as an exhibit, or whether it shall be incorporated into the evidence by reference. If relevant and material matter offered in evidence is embraced in a report, document, or transcript containing immaterial or irrelevant matter, such immaterial or irrelevant matter shall be excluded and shall be segregated insofar as practicable, subject to the direction of the judge.

(7) *Official notice.* Official notice will be taken of such matters as are judicially noticed by the courts of the United States and of any other matter of technical, scientific, or commercial fact of established character: *Provided,* That the parties shall be given adequate notice, at the hearing or by reference in the judge's report or the tentative order or otherwise, of matters so noticed, and (except where official notice is taken, for the first time in the proceeding, in the final order)

shall be given adequate opportunity to show that such facts are erroneously noticed.

(8) *Offer of proof.* Whenever evidence is excluded from the record, the party offering such evidence may make an offer of proof, which shall be included in the transcript. The offer of proof shall consist of a brief statement describing the evidence to be offered. If the evidence consists of a brief oral statement or of an exhibit, it shall be inserted into the transcript in toto. In such event, it shall be considered a part of the transcript if the Secretary decides that the judge's ruling in excluding the evidence was erroneous. The judge shall not allow the insertion of such evidence in toto if the taking of such evidence will consume a considerable length of time at the hearing. In the latter event, if on appeal the Secretary decides that the judge erred in excluding the evidence, and that such error was substantial, the hearing shall be reopened to permit the taking of such evidence.

(e) [Reserved]

(f) *Transcript.* (1) During the period in which the proceeding has an active status the transcript and exhibits shall be kept on file in the office of the hearing clerk, where it shall be available for examination during official hours of business. Thereafter said transcript and exhibits shall be made available by the hearing clerk for examination during official hours of business after prior request and reasonable notice to the hearing clerk.

(2) If a personal copy of the transcript is desired, such copy may be obtained upon written application filed with the reporter, and upon payment of fees at the rate (if any) provided in the contract between the reporter and the Secretary.

[25 FR 5907, June 28, 1960, as amended at 38 FR 29798, Oct. 29, 1973]

§ 900.61 Depositions.

(a) *Procedure in lieu of deposition.* Before any party may have testimony taken by deposition, said party shall, if practicable, submit to the other party an affidavit which shall set forth the facts to which the witness would testify, if the deposition should be taken. If, after examination of such affidavit, the other party agrees, or (within 10 days after submission of the affidavit) fails to object, that the affidavit may be used in lieu of the deposition, the judge shall admit the affidavit in evidence and shall not order the deposition to be taken.

(b) *Application for taking deposition.* Upon the application of a party to the proceeding, the judge may, at any time after the filing of the moving paper, order, under the facsimile signature of the Secretary, the taking of testimony by deposition. The application shall be in writing and shall be filed with the hearing clerk and shall set forth: (1) The name and address of the proposed deponent; (2) the name and address of the person (referred to hereinafter in this section as the "judge"), qualified under the rules in this part to take depositions, before whom the proposed examination is to be made; (3) the proposed time and place of the examination, which shall be at least 15 days after the date of the mailing of the application; and (4) the reasons why such deposition should be taken.

(c) *Judge's order for taking deposition.* If, after the examination of the application, the judge is of the opinion that the deposition should be taken, he shall order its taking. The order shall be filed with the hearing clerk and shall be served upon the parties and shall state: (1) The time and place of the examination (which shall not be less than 10 days after the filing of the order); (2) the name of the judge before whom the examination is to be made; (3) the name of the deponent. The judge and the time and place need not be the same as those suggested in the application.

(d) *Qualifications of judge.* The deposition shall be taken before the judge, or before a judge authorized by the law of the United States or by the law of the place of the examination to administer oaths, or before a judge authorized by the Secretary to administer oaths.

(e) *Procedure on examination.* (1) The deponent shall be examined under oath or affirmation and shall be subject to cross-examination. The testimony of the deponent shall be recorded by the judge or by some person

under his direction and in his presence. In lieu of oral examination, parties may transmit written interrogatories to the judge prior to the examination and the judge shall propound such interrogatories to the deponent.

(2) The applicant must arrange for the examination of the witness either by oral examination or by written interrogatories. If it is found by the judge, upon the protest of a party to the proceeding, that such party has his residence and his place of business more than 100 miles from the place of the examination and that it would constitute an undue hardship upon such party to be represented at the examination, the applicant will be required to conduct the examination by means of interrogatories. When the examination is conducted by means of interrogatories, copies of the interrogatories shall be served upon the other parties to the proceeding at least five days prior to the date set for the examination, and the other parties shall be afforded an opportunity to file with the judge cross-interrogatories at any time prior to the time of the examination.

(f) *Certification by judge.* The judge shall certify on the deposition that the deponent was duly sworn by him and that the deposition is a true record of the deponent's testimony. He shall then securely seal the deposition, together with two copies thereof, in an envelope and mail the same by registered mail to the hearing clerk.

(g) *Use of depositions.* A deposition ordered and taken in accord with the provisions of this section may be used in a proceeding under the act if the judge finds that the evidence is otherwise admissible and (1) that the witness is dead; or (2) that the witness is at a distance greater than 100 miles from the place of hearing, unless it appears that the absence of the witness was procured by the party offering the deposition; or (3) that the witness is unable to attend or testify because of age, sickness, infirmity, or imprisonment; or (4) that the party offering the deposition has endeavored to procure the attendance of the witness by subpena but has been unable to do so; or (5) that such exceptional circumstances exist as to make it desirable, in the interests of justice, to allow the deposition to be used. If a deposition has been taken, and the party upon whose application it was taken refuses to offer it in evidence, the other party may offer the deposition, or any part thereof, in evidence.

§ 900.62 Subpenas.

(a) *Issuance of subpenas.* The attendance of witnesses and the production of documentary evidence from any place in the United States on behalf of any party to the proceeding may, by subpena, be required at any designated place of hearing. Subpenas may be issued by the Secretary or by the judge, under the facsimile signature of the Secretary, upon a reasonable showing by the applicant of the grounds, necessity, and reasonable scope thereof.

(b) *Application for subpena duces tecum.* Subpenas for the production of documentary evidence, unless issued by the judge upon his own motion, shall be issued only upon a certified written application. Such application shall specify, as exactly as possible, the documents desired and shall show their competency, relevancy, and materiality and the necessity for their production.

(c) *Service of subpenas.* Subpenas may be served (1) by a United States Marshal or his deputy, or (2) by any other person who is not less than 18 years of age, or (3) by registering and mailing a copy of the subpena addressed to the person to be served at his or its last known residence or principal place of business or residence. Proof of service may be made by the return of service on the subpena by the United States Marshal or his deputy; or, if served by an individual other than a United States Marshal or his deputy, by an affidavit of such person stating that he personally served a copy of the subpena upon the person named therein; or, if service was by registered mail, by an affidavit made by the person mailing the subpena that it was mailed as provided in this paragraph and by the signed return postoffice receipt: *Provided,* That, if the subpena is issued on behalf of the Department, the return

receipt without an affidavit of mailing shall be sufficient proof of service. In making personal service, the person making service shall leave a copy of the subpena with the person subpenaed; the original, bearing or accompanied by the required proof of service, shall be returned to the official who issued the same.

§ 900.63 Fees and mileage.

Witnesses who are subpenaed and who appear in such proceeding, including witnesses whose depositions are taken, shall be paid the same fees and mileage that are paid witnesses in the courts of the United States, and persons taking depositions shall be entitled to the same fees as are paid for like services in the courts of the United States, to be paid by the party at whose request the deposition is taken. Witness fees and mileage shall be paid by the party at whose instance the witnesses appear, and claims therefor, as to witnesses subpenaed on behalf of the Department, shall be proved before the person issuing the subpena, and, as to witnesses subpenaed on behalf of any other party, shall be presented to such party.

§ 900.64 The Administrative Law Judge's decision.

(a) *Corrections to and certification of transcript.* (1) At such time as the judge may specify, but not later than the time fixed for filing proposed findings of fact, conclusions and order, or briefs, as the case may be, the parties may file with the judge proposed corrections to the transcript. (2) As soon as practicable after the filing of proposed findings of fact, conclusions and order, or briefs, as the case may be, the judge shall file with the hearing clerk his certificate indicating any corrections to be made in the transcript, and stating that, to the best of his knowledge and belief, the transcript, as corrected, is a true, correct, and complete transcript of the testimony given at the hearing, and that the exhibits are all the exhibits properly a part of the hearing record. The original of such certificate shall be attached to the original transcript and a copy of such certificate shall be served upon each of the parties by the hearing clerk who shall also enter onto the transcript (without obscuring the text) any correction noted in the certification.

(b) *Proposed findings of fact, conclusions, and orders.* Within 10 days (unless the judge shall have announced at the hearing a shorter or longer period of time) after the transcript has been filed with the hearing clerk, as provided in paragraph (a) of this section, each party may file with the hearing clerk proposed findings of fact, conclusions, and order, based solely upon the evidence of record, and briefs in support thereof.

(c) *Administrative Law Judge's Decision.* The judge, within a reasonable time after the termination of the period allowed for the filing of proposed findings of fact, conclusions,and orders, and briefs in support thereof, shall prepare upon the basis of the record, and shall file with the hearing clerk, his initial decision, a copy of which shall be served by the hearing clerk, upon each of the parties. Such decision shall become final without further proceedings 35 days after the date of service thereof, unless there is an appeal to the Secretary by a party to the proceeding: *Provided, however,* That no decision shall be final for the purpose of judicial review except a final decision issued by the Secretary pursuant to an appeal by a party to the proceeding.

[25 FR 5907, June 28, 1960, as amended at 38 FR 29799, Oct. 29, 1973]

§ 900.65 Appeals to Secretary: Transmittal of record.

(a) *Filing of appeal.* Any party who disagrees with a judge's decision or any part thereof, may appeal the decision to the Secretary by transmitting an appeal petition to the hearing clerk within 30 days after service of said decision upon said party. Each issue set forth in the appeal, and the arguments thereon, shall be separately numbered; shall be plainly and concisely stated; and shall contain detailed citations of the record, statutes, regulations and authorities being relied upon in support thereof. The appeal petition shall be served upon

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the other party to the proceeding by the hearing clerk.

(b) *Argument before Secretary*—(1) *Oral argument.* A party bringing an appeal may request within the prescribed time period for filing such appeal, an opportunity for oral argument before the Secretary. Failure to make such request in writing, within the prescribed time period, shall be deemed a waiver of oral argument. The Secretary, in his discretion, may grant, refuse or limit any request for oral argument on appeal.

(2) *Scope of argument.* Argument to be heard on appeal, whether oral or in a written brief, shall be limited to the issues raised by the appeal, except that if the Secretary determines that additional issues should be argued, the parties shall be given reasonable notice of such determination, so as to permit preparation of adequate arguments on all the issues to be argued.

(c) *Response.* Within 20 days after service of an appeal brought by a party to the proceeding, any other party may file a response in support of or in opposition to such appeal.

(d) *Transmittal of record.* Whenever an appeal is filed by a party to the proceeding, the hearing clerk shall transmit to the Secretary the record of the proceeding. Such record shall include: The pleadings; any motions and requests filed, and the rulings thereon; the transcript of the testimony taken at the hearing, as well as the exhibits filed in connection therewith; any statements filed under the shortened procedure; any documents or papers filed in connection with prehearing conferences; such proposed findings of fact, conclusions, and orders, and briefs in support thereof, as may have been filed in connection with the hearing; the judge's initial decision; and the appeal petition; briefs in support thereof, and responses thereto as may have been filed in the proceeding.

[38 FR 29799, Oct. 29, 1973]

§ 900.66 Consideration of appeal by the Secretary and issuance of final order.

(a) *Consideration of appeal.* As soon as practicable after the receipt of the record from the hearing clerk, or, in case oral argument was had, as soon as practicable thereafter, the Secretary, upon the basis of and after due consideration of the record, shall rule on the appeal. If the Secretary decides that no change or modification of the judge's decision is warranted, he may adopt the Judge's decision as the final order of the Secretary, preserving any right of the party bringing the appeal to seek judicial review of such decision in the proper forum. At no stage of the proceeding between its institution and the issuance of the order shall the Secretary discuss ex parte the merits of the proceeding with any person who is connected with the proceeding in an advocative or an investigative capacity, or with any representative of such person: *Provided, however,* That the Secretary may discuss the merits of the proceeding with such a person if all parties to the proceeding, or their representatives, have been given an opportunity to be present. If, notwithstanding the foregoing provisions of this section, a memorandum or other communication from any party, or from any person acting on behalf of any party, which relates to the merits of the proceeding, receives the personal attention of the Secretary (or, if an official other than the Secretary is to issue the order, then of such other official) during the pendency of the proceeding, such memorandum or communication shall be regarded as argument made in the proceeding and shall be filed with the hearing clerk, who shall serve a copy thereof upon the opposite party to file a reply thereto.

(b) *Issuance of final order.* A final order issued by the Secretary shall be filed with the hearing clerk, who shall serve it upon the parties: *Provided,* That, if the terms of the order differ substantially from those proposed in the decision of the judge, the Secretary shall, if he deems it advisable to do so, direct that a copy of the order be served upon the parties as a tentative order; and, in such event, opportunity shall be given the parties to file exceptions thereto and written arguments or briefs in support of such exceptions. In such case, if exceptions are filed within a period of time (to be fixed by the Secretary but not to exceed 20 days) following the service of the tentative order, the Secretary

shall give consideration, to and shall make such changes in the tentative order as he deems to be appropriate; otherwise, the tentative order shall become final, as of the day following the date of expiration of the period fixed for the filing of exceptions.

[38 FR 29799, Oct. 29, 1973]

§ 900.68 Applications for reopening hearings; for rehearings or reargument of proceedings; or for reconsideration of orders.

(a) *Petition requisite*—(1) *Filing; service.* An application for reopening the hearing to take further evidence, or for rehearing or reargument of the proceeding, or for reconsideration of the order shall be made by petition addressed to the Secretary and filed with the hearing clerk, who immediately shall notify and serve a copy thereof upon the other party to the proceeding. Every such petition shall state specifically the grounds relied upon.

(2) *Petitions to reopen hearings.* A petition to reopen the hearing for the purpose of taking additional evidence may be filed at any time prior to the issuance of the final order. Every such petition shall state briefly the nature and purpose of the evidence to be adduced, shall show that such evidence is not merely cumulative, and shall set forth a good reason why such evidence was not adduced at the hearing.

(3) *Petitions to rehear or reargue proceedings, or to reconsider orders.* A petition to rehear or reargue the proceeding or to reconsider the final order shall be filed within 15 days after the date of the service of such order. Every such petition shall state specifically the matters claimed to have been erroneously decided, and alleged errors must be briefly stated.

(b) *Procedure for disposition of petitions.* Within 10 days following the service of any petition provided for in this section, the other party to the proceeding shall file with the hearing clerk an answer thereto. As soon as practicable thereafter, the Secretary shall announce the decision granting or denying the petition. Unless the Secretary shall determine otherwise, the issuance or operation of the order shall not be stayed pending the decision of the Secretary upon the petition. In the event that any such petition is granted by the Secretary, the applicable rules of practice, as set out elsewhere in this subpart, shall be followed.

§ 900.69 Filing; service; extensions of time; effective date of filing; and computation of time.

(a) *Filing; number of copies.* Except as provided otherwise herein, all documents or papers required or authorized in this subpart to be filed with the hearing clerk shall be filed in quadruplicate: *Provided,* That, if there are more than two parties to the proceeding, a sufficient number of additional copies shall be filed so as to provide for service upon all the parties to the proceeding. Any document or paper, required or authorized in this subpart to be filed with the hearing clerk, shall, during the course of an oral hearing, be filed with the judge.

(b) *Service; proof of service.* Copies of all such papers shall be served upon the parties by the hearing clerk, by the judge, or by some other employee of the Department or by a United States Marshal or his deputy. Service shall be made either (1) by delivering a copy of the document or paper to the individual to be served or to a member of the partnership to be served or to the president, secretary, or other executive officer or any director of the corporation, organization, or association to be served, or to the attorney or agent of record of such individual, partnership, corporation, organization, or association; or (2) by leaving a copy of the document or paper at the principal office or place of business of such individual, partnership, corporation, organization, or association, or of his or its attorney or agent of record; or (3) by registering and mailing a copy of the document or paper, addressed to such individual, partnership, corporation, organization, or association, or to his or its attorney or agent of record, at his or its last known principal office, place of business, or residence. Proof of service hereunder shall be made by the affidavit of the person who actually made the service. The affidavit contemplated herein shall be filed with the hear-

ing clerk, and the fact of filing thereof shall be noted on the docket of the proceeding.

(c) *Extensions of time.* The time for the filing of any documents or papers required or authorized in this subpart to be filed may be extended upon (1) a written stipulation between the parties, or (2) upon the request of a party, by the judge before the transmittal of the record to the Secretary, or by the Secretary at any other time if, in the judgment of the Secretary or the judge, as the case may be, there is good reason for the extension.

(d) *Effective date of filing.* Any document or paper, except a petition filed pursuant to § 900.52, required or authorized under these rules to be filed shall be deemed to have been filed when it is postmarked, or when it is received by the hearing clerk. Any petition filed under § 900.52 shall be deemed to be filed when it is received by the hearing clerk.

(e) *Computation of time.* Sundays and Federal holidays shall be included in computing the time allowed for the filing of any document or paper: *Provided,* That, when such time expires on a Sunday or legal holiday, such time shall be extended to include the next following business day.

§ 900.70 Applications for interim relief.

(a) *Filing the application.* A person who has filed a petition pursuant to § 900.52 may by separate application filed with the hearing clerk apply to the Secretary or an order postponing the effective date of, or suspending the application of, the marketing order or any provision thereof, or any obligation imposed in connection therewith, pending final determination of the proceeding.

(b) *Contents of the application.* The application shall contain a statement of the facts upon which the relief is requested, including any facts showing irreparable injury. The application must be signed and sworn to by the petitioner and any facts alleged therein which are not within his personal knowledge shall be supported by affidavits of a person or persons having personal knowledge of such facts or by proper documentary evidence thereof.

(c) *Answer to application.* Immediately upon receipt of the application, the hearing clerk shall transmit a copy thereof, together with all supporting papers, to the Administrator, who shall, within 20 days, or such other time fixed by the Secretary, after the filing of the application file an answer thereto with the hearing clerk.

(d) *Contents of answer.* The answer shall contain a statement of the objections, if any, of the Administrator to the application for interim relief, and may be supported by affidavits and documentary evidence.

(e) *Transmittal to Secretary.* Upon receiving the answer of the Administrator or upon the expiration of the time for filing the answer, the hearing clerk shall transmit to the Secretary for his decision all papers filed in connection with the application.

(f) *Hearing and oral argument.* The Secretary may, in his discretion, permit oral argument or the taking of testimony in connection with such application. However, unless written request therefor is filed with the hearing clerk prior to the transmittal of the papers to the Secretary, the parties shall be deemed to have waived oral argument and the taking of testimony.

(g) *Decision by Secretary.* The Secretary may grant or deny the application. Any action taken by the Secretary shall be in the form of an order filed with the hearing clerk and shall contain a brief statement of the reasons for the action taken. The hearing clerk shall cause copies of the order to be served upon the parties.

§ 900.71 Hearing before Secretary.

The Secretary may act in the place and stead of a judge in any proceeding hereunder. When he so acts the hearing clerk shall transmit the record to the Secretary at the expiration of the period provided for the filing of proposed findings of fact, conclusions and orders, and the Secretary shall thereupon, after due consideration of the record, issue his final order in the proceeding: *Provided,* That he may issue a tentative order in which event the parties shall be afforded an opportuni-

ty to file exceptions before the issuance of the final order.

Subpart—Procedure Governing Meetings To Arbitrate and Mediate Disputes Relating to Sales of Milk or Its Products

AUTHORITY: Sec. 3, 50 Stat. 248; 7 U.S.C. 671.

§ 900.100 Words in the singular form.

Words in this subpart in the singular form shall be deemed to import the plural, and vice versa, as the case may demand.

§ 900.101 Definitions.

As used in this subpart, the terms as defined in the act shall apply with equal force and effect. In addition, unless the context otherwise requires:

(a) The term "act" means section 3 of the Agricultural Marketing Agreement Act of 1937, as amended (50 Stat. 248, as amended; 7 U.S.C. 671);

(b) The term "Department" means the United States Department of Agriculture;

(c) The term "Secretary" means the Secretary of Agriculture of the United States, or any officer or employee of the Department to whom authority has heretofore been delegated, or to whom authority may hereafter be delegated, to act in his stead;

(d) The term "General Counsel" means the General Counsel of the Department;

(e) The term "Administrator" means the Administrator of the Agricultural Marketing Service, with power to redelegate, or any officer or employee of the Department to whom authority has been delegated or may hereafter be delegated to act in his stead;

(f) The term "Service" means the Agricultural Marketing Service;

(g) The term "Division" means the Dairy Division of the Service;

(h) The term "cooperative" means any association, incorporated or otherwise, which is in good faith owned or controlled by producers, or organizations thereof, of milk or its products, and which is bona fide engaged in the collective processing or preparing for market or handling or marketing, in the current of interstate or foreign commerce, of milk or its products;

(i) The term "arbitrator" means any officer or employee of the Service designated by the Administrator, pursuant to the act, to arbitrate a bona fide dispute with reference to the terms and conditions of the sale of milk or its products between a producer cooperative and purchasers, handlers, processors, or distributors of milk or its products;

(j) The term "mediator" means any officer or employee of the Service designated by the Administrator, pursuant to the act, to mediate a bona fide dispute with reference to terms and conditions of the sale of milk or its products between a producer cooperative and purchasers, handlers, processors, or distributors of milk or its products;

(k) The term "hearing clerk" means the hearing clerk, United States Departent of Agriculture, Washington, D.C.

[25 FR 5907, June 28, 1960, as amended at 26 FR 7797, Aug. 22, 1961; 28 FR 579, Jan. 23, 1963; 37 FR 8059, Apr. 25, 1972]

§ 900.102 Filing of applications for mediation or arbitration.

All applications for mediation or arbitration, all submissions, and all correspondence regarding mediation or arbitration shall be addressed to the Secretary, attention of the Division.

§ 900.103 Application for mediation.

An application for mediation by a cooperative, shall be in writing and shall include the following information:

(a) Names in full of the parties to the dispute and their addresses;

(b) Description of the cooperative organization and business, including copies of the articles of incorporation or association, by-laws, and membership contract; information regarding the number of shares of outstanding stock and the approximate portion owned by active producers; a statement of the function performed in connection with the collective processing, preparing, handling, or marketing of milk or its products; and data relative to the distribution of membership

by States, the distribution by States of plant facilities for collecting, processing, or disposing of milk or its products, and the business operations for the year last past, including the total quantity of milk and its products handled by the applicant and the proportion of that quantity that was sold in States other than the States of production;

(c) Suggested time and place for meeting between parties and mediator.

§ 900.104 Inquiry by the Administrator.

Upon receipt of an application for mediation, the Administrator, through such officers or employees of the Service as he may designate, may make any inquiry which is deemed to be necessary or proper in order to determine whether a bona fide dispute exists.

§ 900.105 Notification.

The Administrator, acting on behalf of the Secretary will notify the applicant as to whether he considers that mediation will effectuate the purpose of the act and as to whether he will mediate.

§ 900.106 Assignment of mediator.

The Director of the Division shall assign a mediator, from the group designated by the Administrator, to act in such capacity.

§ 900.107 Meetings.

All meetings held pursuant to §§ 900.103 to 900.109 shall be held with and under the direction of the mediator.

§ 900.108 Mediator's report.

The mediator, upon the completion of mediation proceedings, shall submit to the Administrator a complete report on such proceedings.

§ 900.109 Mediation agreement.

An agreement arrived at by mediation shall not become effective until approved by the Secretary, and the Secretary will not approve an agreement if there is evidence of fraud, if there is a lack of evidence to support the agreement, or if the agreement provides for any unfair trade practice.

§ 900.110 Application for arbitration.

An application for arbitration by a cooperative shall be in writing and shall contain the following information:

(a) Names in full of the parties to the dispute and their addresses;

(b) The same information required under § 900.103(b);

(c) Concise statement of dispute to be submitted;

(d) Originals or certified copies of all contracts, if any, involved in the dispute, and of correspondence which has passed between the parties and of any other documents or information relied upon;

(e) Dates before which it is desired that the hearing shall be had and the award shall become effective;

(f) Suggested time and place for arbitration hearing.

The applicant shall send a copy of the application to each other party to the dispute.

§ 900.111 Inquiry by the Administrator.

Upon receipt of an application for arbitration, the Administrator, through such officers or employees of the Service as he may designate, may make any inquiry deemed to be necessary or proper in order to determine whether a bona fide dispute exists, to assist the parties in reducing the dispute to well-defined issues, and to select an arbitrator who would be satisfactory to all parties.

§ 900.112 Notification.

The Administrator, acting on behalf of the Secretary, within a reasonable time after the receipt of an application, will notify the applicant as to whether he will grant the application.

§ 900.113 Submission.

(a)(1) Within a reasonable time after the receipt of the Administrator's consent to arbitrate, the parties to the dispute shall file with the Administrator a formal submission, which shall contain the following information:

(i) Names in full of the parties;

(ii) Addresses of the parties to whom all notifications and communications concerning the arbitration shall be sent;

(iii) Description of the organization and businesses of all parties to the dispute, including sufficient information to show that the cooperative is a bona fide one, and that the parties are engaged in activities in the current of interstate or foreign commerce;

(iv) Concise statement of the specific questions submitted and a brief outline of the contentions of each party to the dispute, and a statement as to the period of time during which the award shall be in effect, said period to be not less than thirty days from the effective date of the award;

(v) Name of arbitrator;

(vi) Time and place of arbitration, including street address;

(vii) Stipulation by the parties that they will produce any books, records, and correspondence required by the arbitrator as being necessary to a fair determination of the dispute;

(viii) Agreement by the parties that they will consider the award as final and will comply therewith;

(ix) Stipulation by the parties that arbitration is to take place under rules and regulations issued by the Secretary, and that any such rules and regulations pertaining to mediation and arbitration shall be considered a part of the submission;

(x) Stipulation that a stenographic report of the proceedings must be made.

(2) The submission shall be signed by each party before a notary public, and when the signature is that of an agent of a corporation or cooperative association, the same shall be accompanied by evidence of the authority to sign.

(3) A submission may be withdrawn at any time before the award, and any question held by the arbitrator to be a separable question may be withdrawn before award by agreement of all parties. When any question is so withdrawn, the parties shall file with the arbitrator the agreement on that question reached by the parties, showing all the details thereof, and the arbitrator shall include it in the record of the arbitration.

§ 900.114 Designation of arbitrator.

The Administrator, after receiving the submission, will designate one or more persons to act as arbitrator.

§ 900.115 Hearing.

(a) The arbitrator shall have full discretion to conduct the hearing in such manner as will, in his opinion, enable him to ascertain all the facts in the case.

(b) Parties to the dispute may appear in person or by duly accredited agents and may be represented by counsel.

(c) All relevant and material evidence may be presented. The arbitrator shall not be bound by the legal rules of evidence.

(d) The arbitrator, in the presence of the parties, may require the production of books and records for examination by himself, but not for examination of confidential information by other parties to the dispute unless the party producing the same consents to its examination by the other parties to the dispute.

(e) No evidence offered by one party shall be recieved except in the presence of all parties unless the parties so agree in a submission specifying the nature of the evidence to be received.

(f) Final determination as to what will be considered confidential information shall be made by the arbitrator.

(g) The arbitrator may request the opinions of economists, marketing specialists, statisticians, lawyers, accountants, and other experts.

(h) When more than two arbitrators are designated to hear a dispute, and they disagree, the award of the majority shall be the final award. If the arbitrators are evenly divided, there shall be no award.

(i) A stenographic record of all the proceedings during an arbitration must be made.

§ 900.116 Award.

(a) An award shall be made within ten days after the close of the hearing.

(1) The award shall be in writing and shall cover only points of dispute raised in the submission.

(2) The arbitrator, in making the award, may use his own technical knowledge in addition to the evidence submitted by the parties.

(3) The award shall state the period during which it shall be in effect, said period to be not less than thirty days from the effective date thereof; and said period may be extended by agreement among the parties upon notification thereof to the Administrator, unless or until the Administrator withdraws his approval.

(4) The arbitrator shall sign the award in the presence of a notary public, or, when more than one arbitrator is designated the arbitrator shall sign in the presence of each other.

(5) Copies of the award shall be delivered to the parties by the Division.

§ 900.117 Approval of award.

The award shall not become effective until approved by the Secretary, and the Secretary will not approve an award if there is evidence of fraud, or evidence of misconduct upon the part of the arbitrator, or lack of evidence to support the award, or if the award provides for any unfair trade practice.

§ 900.118 Costs.

The parties jointly shall pay for the stenographic record. A copy of the record shall be furnished by the parties to the arbitrator and shall be forwarded by him to the Administrator, ultimately to be filed in the office of the hearing clerk. The arbitrator shall not receive compensation for parties to the dispute.

Subpart—Miscellaneous Regulations

AUTHORITY: Sec. 10, 48 Stat. 37, as amended; 7 U.S.C. 610.

§ 900.200 Definitions.

As used in this subpart, the terms as defined in the Act shall apply with equal force and effect. In addition, unless the context otherwise requires:

(a) The term "Act" means Public Act No. 10, 73d Congress (48 Stat. 31), as amended and as reenacted and amended by the Agricultural Marketing Agreement Act of 1937 (50 Stat. 246, 7 U.S.C. 601), as amended;

(b) The term "Department" means the United States Department of Agriculture;

(c) The term "Secretary" means the Secretary of Agriculture of the United States, or any officer or employee of the Department to whom authority has heretofore been delegated, or to whom authority may hereafter be delegated, to act in his stead;

(d) The term "General Counsel" means the General Counsel of the Department;

(e) The term "Administrator" means the Administrator of the Agricultural Marketing Service, with power to redelegate, or any officer or employee of the Department to whom authority has been delegated or may hereafter be delegated to act in his stead.

(f) [Reserved]

(g) The term "FEDERAL REGISTER" means the publication provided for by the Act of July 26, 1935 (49 Stat. 500), and Acts supplementary thereto and amendatory thereof;

(h) The term "marketing agreement" means any marketing agreement or any amendment thereto which may be entered into pursuant to section 8b of the Act;

(i) The term "marketing order" means any order or any amendment thereto which may be issued pursuant to section 8c of the Act;

(j) The term "person" means any individual, corporation, partnership, association, or any other business unit;

(k) The term "official" means the Secretary, any officer, employee, or other person employed or appointed by the Department, and any agency or agent appointed by the Secretary to administer a marketing agreement or a marketing order, and any agent or employee of any such agency or agent;

(l) The term "information" means and includes reports, books, accounts, records, and the facts and information contained therein and required to be furnished to or acquired by any official pursuant to the provisions of any marketing agreement or marketing order.

[25 FR 5907, June 28, 1960, as amended at 26 FR 7796, Aug. 22, 1961; 28 FR 579, Jan. 23, 1963; 37 FR 8059, Apr. 25, 1972]

§ 900.201 Investigation and disposition of alleged violations.

Whenever the Administrator has reason to believe that any handler has violated, or is violating, the provisions of any marketing order, he may institute such investigation and, after due notice to such handler, conduct such hearing in order to determine the facts as, in his opinion, are warranted. If, in the opinion of the Administrator and the General Counsel, the facts developed as a result of such investigation or hearing warrant such action, the General Counsel shall refer the matter to the Attorney General for appropriate action.

§ 900.210 Disclosures of information.

All information in the possession of any official which relates to the business or property of any person, and which was furnished by, or obtained from, such person pursuant to the provisions of any marketing agreement or marketing order, shall be kept confidential and shall not be disclosed, divulged, or made public, unless otherwise expressly provided in said marketing agreement or marketing order, or unless said person authorizes said official, in writing, to disclose such information, except that:

(a) Such information may be disclosed, divulged, or made public if it has been obtained from or furnished by a person who is not the person to whose business or property such information relates or an employee of such latter person, or if such information is otherwise required by law to be furnished to an official;

(b) Such information may be furnished to other officials for use in the regular course of their official duties;

(c) Such information may be combined and published in the form of general statistical studies or data in which the identity of the person furnishing such information or from whom it was obtained shall not be disclosed;

(d) Such information may be disclosed upon lawful demand made by the President or by either House of Congress or any committee thereof, or, if the Secretary determines that such disclosure is not contrary to the public interest, such information may be disclosed in response to a subpena by any court of competent jurisdiction.

(e) Such information may be offered in evidence (whether or not it has been obtained from or furnished by the person against whom it is offered) by or on behalf of the Secretary, the United States, or the official who obtained it or to whom it was furnished, in any administrative hearing held pursuant to section 8c(15)(A) of the Act or in any action, suit, or proceeding, civil or criminal, in which the Secretary or the United States or any such official is a party, and:

(1) Which is instituted (i) for the purpose of enforcing or restraining the violation of any marketing agreement or marketing order, or (ii) for the purpose of collecting any penalty or forfeiture provided for in the Act, or (iii) for the purpose of collecting any monies due under a marketing agreement or marketing order, or

(2) In which the validity of any marketing agreement or marketing order, or any provision of either, is challenged or involved.

(f) Such information may be furnished to the duly constituted authorities of any State, pursuant to a written agreement made under authority of section 10(i) of the Act, to the extent that such information is relevant to transactions within the regulatory jurisdiction of such authorities.

§ 900.211 Penalties.

Any official who shall have violated the provisions of § 900.210 by wilfully divulging, disclosing, or making public any information acquired by or furnished to or in the possession or custody of such official pursuant to the provisions of a marketing agreement or marketing order shall be subject to a penalty of $100 for each offense. (The civil penalty provided in this section is prescribed under the authority contained in sec. 10(c) of the Act (7 U.S.C. 610(c)); this provision is not intended to supersede the provision in sec. 8d(2) of the Act (7 U.S.C. 608d(2)) for criminal liability and removal from office.)

Subpart—Procedure for Conduct of Referenda To Determine Producer Approval of Milk Marketing Orders To Be Made Effective Pursuant to Agricultural Marketing Agreement Act of 1937, as Amended

AUTHORITY: Secs. 1-19, 48 Stat. 31, as amended; 7 U.S.C. 601-674.

SOURCE: 30 FR 15412, Dec. 15, 1965, unless otherwise noted.

§ 900.300 General.

Unless otherwise prescribed, the procedure contained in this subpart shall be applicable to each producer referendum conducted for the purpose of ascertaining whether the issuance by the Secretary of a milk marketing order is approved or favored, as required under the applicable provisions of the Agricultural Marketing Agreement Act of 1937, as amended (48 Stat. 31, as amended, 7 U.S.C. 601-674). The procedure in this subpart replaces the procedure for conducting similar referenda (15 FR 5177) issued August 7, 1950.

§ 900.301 Definitions.

As used in this subpart and in all supplementary instructions, forms, and documents, unless the context or subject matter otherwise requires, the following terms shall have the following meanings:

(a) *Act.* "Act" means Public Act No. 10, 73d Congress (48 Stat. 31), as amended, and as re-enacted and amended by the Agricultural Marketing Agreement Act of 1937 (50 Stat. 246), as amended.

(b) *Department.* "Department" means the United States Department of Agriculture.

(c) *Secretary.* "Secretary" means the Secretary of Agriculture of the United States, or any officer or employee of the Department to whom authority has heretofore been delegated, or to whom authority may hereafter be delegated, to act in his stead.

(d) *Administrator.* "Administrator" means the Administrator of the Agricultural Marketing Service, with power to redelegate, or any officer or employee of the Department to whom authority has been delegated or may hereafter be delegated to act in his stead.

(e) *Person.* "Person" includes any individual, partnership, corporation, association, and any other business unit.

(f) *Order.* "Order" means the marketing order (including an amendatory order) with respect to which the Secretary has directed that a referendum be conducted.

(g) *Producer.* "Producer" means any person who is a dairy farmer and who, during the representative period, met the requirements of the term "producer" as defined in the order had such order been in effect during the representative period.

(h) *Handler.* "Handler" means any person who, during the representative period, met the requirements of the term "handler" as defined in the order had such order been in effect during the representative period.

(i) *Referendum agent.* "Referendum agent" means the person designated by the Secretary to conduct the referendum.

(j) *Representative period.* "Representative period" means the period designated by the Secretary pursuant to section 8c of the Act (7 U.S.C. 608c).

(k) *Cooperative association.* "Cooperative association" means any association of producers that the administrator has found to be qualified pursuant to section 608c(12) of the Act.

[30 FR 15412, Dec. 15, 1965, as amended at 37 FR 8059, Apr. 25, 1972]

§ 900.302 Associations eligible to vote.

(a) Any association of producers, not previously determined to be a cooperative association may file an application for a determination as to whether it is a cooperative association and thus eligible to vote in a referendum. Such application shall be filed with the Administrator at least 60 days prior to the holding of the referendum: *Provided, however,* That the Administrator may permit the filing of an application in less than 60 days when, in the opinion of the Administrator, such filing would not delay the conduct of the referendum.

(b) Within a time fixed by the referendum agent, but not later than 5 days prior to the final date for ballot-

ing, each cooperative association electing to vote shall, upon the request of the referendum agent, furnish to him a certified list showing the name and address of each producer for whom it claims the right to vote and the plant at which such person's milk was received during the representative period.

§ 900.303 Conduct of referendum.

The referendum shall be conducted by mail in the manner prescribed in this subpart. The referendum agent may utilize such personnel or agencies of the Department as are deemed necessary by the Administrator.

§ 900.304 Who may vote.

(a) Each producer shall be entitled to only one vote and to cast one ballot in each referendum; and no person who may claim to be a producer shall be refused a ballot. Each producer casting more than one ballot with conflicting votes shall thereby invalidate all ballots cast by such producer in such referendum. Each ballot cast shall contain a certification by the person casting the ballot that he is a producer.

(b) Except as provided in section 8c(5)(B) of the act, as amended, any cooperative association eligible under § 900.302 may, if it elects to do so, vote and cast one ballot for producers who are members of, stockholders in, or under contract with, such cooperative association. A cooperative association shall submit, with its ballot, a certified copy of the resolution authorizing the casting of the ballot. Each such cooperative association entitled to vote in a referendum casting more than one ballot with conflicting votes shall thereby invalidate all ballots cast by such voter in such referendum.

(c) Voting by proxy or agent, or in any manner, except by the producer or cooperative association will not be permitted; however, a producer which is other than an individual may cast its ballot by a person who is duly authorized and such ballot shall contain a certification by such person that the person on whose behalf the ballot is cast is a producer.

§ 900.305 Duties of referendum agent.

The referendum agent shall also:

(a) For purposes of mailing, prepare a record of producers which will disclose the name of each such person, his address, the name of the handler who received the producer's milk during the representative period, and the name of the cooperative association, if any, which claims the right to vote for the producer. Such record may be compiled from readily available sources, including the following:

(1) Records of the Department;

(2) Producer records supplied by handlers;

(3) Health authority records;

(4) Certifications signed by dairy farmers who claim to be producers;

(5) Any other reliable sources of information which may be available to the referendum agent.

(b) Apply, as a guide, the following criteria in preparing a record of producers:

(1) When the order requires approval by an appropriate health authority before a person meets the definition of producer, only those persons having such approval and who otherwise meet the definition may be regarded as producers. When the definition of producer requires the shipment of milk to a handler or a plant as well as health authority approval, only those persons having such approval and whose milk was received by a handler or at a plant may be regarded as producers.

(2) When the order requries shipment to a handler or to a plant, without regard to health authority approval, a person may not be regarded as a producer, except as provided in paragraph (b)(6) of this section, unless his name appears on the handler's producer records.

(3) In the case of a producer that is other than an individual, the business unit shall be regarded as the producer.

(4) No person may be included in the record more than once although he may operate more than one farm, hold more than one health authority approval, or appear on more than one handler's producer records.

(5) In the event the health authority records are not available, are inaccurate, or are incomplete, the appear-

ance of the producer's name on a handler's records as an approved producer shall be prima facie evidence of health authority approval.

(6) In the event any handler refuses or fails to make his records available to the referendum agent, a certification signed by the producer shall be regarded by the referendum agent as prima facie evidence that such person is eligible to vote.

(c) Verify the information supplied by each cooperative association which wishes to vote on behalf of producers, as follows:

(1) Examine the records of the cooperative association for the purpose of ascertaining whether each producer claimed by the cooperative association is a member of, stockholder in, or under contract with the cooperative association.

(2) Identify the persons ascertained to be members of, stockholders in, or under contract with a cooperative association which wishes to vote on behalf of its producers with the names of producers which appear on the record compiled pursuant to paragraph (a) of this section.

(3) In determining whether a cooperative association may vote on behalf of a producer the following criteria shall be used:

(i) The cooperative association may vote for each producer who is a member of, stockholder in, or under contract with such cooperative association on the date of the order directing that the referendum be conducted.

(ii) The cooperative association may cast only one ballot for all such producers.

(iii) Whenever more than one cooperative association claims the right to vote for a producer only the cooperative association which furnished evidence satisfactory to the referendum agent that such association was in fact marketing the milk of the producer on the date of the referendum order may vote for such producer.

§ 900.306 Notice of the referendum.

(a) The referendum agent shall at least 5 days prior to the final date for balloting:

(1) Mail to each cooperative association which has elected to cast a ballot on behalf of its producers and to each of all other known producers, a notice of the referendum which will include instructions for completing the ballot, a statement as to the time within which the ballot must be mailed to, and received by, the referendum agent, a copy of the final decision, and a ballot containing a description of the terms and conditions of the order.

(2) Give public notice of the referendum:

(i) By furnishing press releases and other information to available media of public information (including but not limited to press, radio, and television facilities) serving the area, announcing the time within which ballots must be completed and mailed to and received by the referendum agent, eligibility requirements, where additional information may be procured, and other pertinent information; and

(ii) By such other means as said agent may deem advisable.

§ 900.307 Time for voting.

There shall be no voting except within the time specified by the referendum agent as stated in the notice of the referendum.

§ 900.308 Tabulation of ballots.

(a) *General.* The referendum agent shall verify the information supplied with each ballot. If he ascertains that the person who cast the ballot was eligible to do so, that the ballot is complete and was mailed and received within the prescribed time, the ballot shall be eligible to be counted. If the referendum agent ascertains that the person who cast the ballot was not eligible to do so, or if the producer who cast the ballot was a member of, stockholder in, or under contract with a cooperative association which cast a valid ballot, or if the ballot is not completed or cast in accordance with instructions, or if the ballot was not mailed to or received by the referendum agent within the prescribed time, the ballot shall be marked "disqualified" with a notation on the ballot as to the reason for the disqualification. The total number of ballots cast, including the disqualified ballots, shall be ascertained. The number of eligible

ballots cast approving and the number of eligible ballots cast disapproving the issuance of the order shall also be ascertained. The ballots marked "disqualified" shall not be considered as approving or disapproving the issuance of the order, and the persons who cast such ballots shall not be regarded as participating in the referendum.

(b) *Individual-handler pool provisions.* Whenever separate approval of the pooling provisions of the order is required by section 608c(5)(B)(i) of the act, any ballot which approves the issuance of the order and disapproves the pooling provisions, or approves the pooling provisions and disapproves the issuance of the order, shall be disqualified; and the referendum agent shall mark the ballot accordingly.

(c) *Record of results of the referendum.* The referendum agent shall notify the Administrator of the number of eligible ballots cast, the count of the votes, the number of disqualified ballots and the number of producers who were eligible to cast ballots. The referendum agent shall seal the ballots, including those marked "disqualified", the list of eligible voters and tabulation of ballots, and shall transmit to the Administrator a complete detailed report of all action taken in connection with the referendum together with all the ballots cast and all other information furnished to or compiled by the referendum agent.

(d) *Announcement of the results of the referendum.* Announcement of the results of the referendum will be made only at the direction of the Secretary. The referendum agent, or others who assist in the referendum, shall not disclose the results of the referendum or the total number of ballots cast.

§ 900.309 Confidential information.

The ballots cast, the identity of any person who voted, or the manner in which any person voted and all information furnished to, compiled by, or in the possession of the referendum agent, shall be regarded as confidential.

§ 900.310 Supplementary instructions.

The Administrator is authorized to issue instructions and to prescribe forms and ballots, not inconsistent with the provisions of this subpart, to govern the conduct of referenda by referendum agents.

§ 900.311 Submittals or requests.

Interested persons may secure information or make submittals or requests to the Administrator with respect to the provisions contained in this subpart.

Subpart—Procedure for Determining the Qualification of Cooperative Milk Marketing Associations

AUTHORITY: Secs. 1-19, 48 Stat. 31, as amended; 7 U.S.C. 601-674.

SOURCE: 32 FR 9821, July 6, 1967, unless otherwise noted.

§ 900.350 General statement.

Cooperative marketing associations apply for qualification by the Secretary under the Federal milk order program for certain privileges and exemptions. These privileges and exemptions are expressed in the Agricultural Marketing Agreement Act of 1937 (50 Stat. 246) as amended, and the milk marketing orders issued pursuant to its provisions.

§ 900.351 Applications for qualification.

Any association of producers may apply for determinations as to whether it is a qualified cooperative association with authority to represent producers in order referendums; has authorization to collect payment from handlers for members' milk; and is rendering specified marketing services to producers. Applicant associations should supply information for these determinations, using as a guide Application Form DA-25. The application form may be obtained from the Dairy Division, Agricultural Marketing Service, United States Deparment of Agriculture, Washington, D.C. 20250. Determinations required of the Secretary of Agriculture, or the Administrator of the Agricultural Marketing Service, by delegation are made by the Director of the Dairy Division. Once issued they are valid until amended, suspended or terminated.

§ 900.352 Confidential information.

The documents and other information submitted by an applicant association and otherwise obtained by investigation, examination of books, documents, papers, records, files and facilities, and in reports filed subsequent to initial determinations of qualification, shall be regarded as confidential and shall be governed by § 900.210.

§ 900.353 Qualification standards.

Statutory requirements for qualification of coopertive associations are provided in subsections (5) and (12) of section 608c of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 et seq.). The association must: (a) Be a cooperative marketing association of producers, qualified under the provisions of the Act of Congress of February 18, 1922, as amended, known as the "Capper-Volstead Act," (7 U.S.C. 291, 292); (b) have its entire organization and all of its activities under the control of its members; (c) have full authority in the sale of its members' milk; and (d) be engaged in making collective sales or marketing of milk or milk products for the producers thereof. Qualification for exemption from deductions for marketing service payments under specific marketing orders and payment for milk of members under specific orders shall be determined in accordance with the terms of the respective marketing orders.

§ 900.354 Inspection and investigation.

The Secretary of Agriculture, or his duly authorized representative, shall have the right, at any time after an application is received, to examine all books, documents, papers, records, files and facilities of the association, to verify any of the information submitted and to procure such other information as may be required to determine whether the association is qualified in accordance with its application.

§ 900.355 Annual reporting.

Determinations of qualification for privileges and exemptions are subject to amendment, termination or suspension if the association does not currently meet the qualification standards. An association found to be qualified pursuant to the Act is required to file an annual report after its annual meeting has been held following the close of its fiscal year. Form DA-24 is used for this purpose. The report form is available at the Dairy Division, Agricultural Marketing Service, U.S. Department of Agriculture, Washington, D.C. 20250. The association is required to file a copy of its report with the Dairy Division at Washington and with the market administrator of each order under which it operates.

§ 900.356 Listing of qualified associations.

A copy of each determination of qualification is furnished to the respective association. Copies are also filed in the Dairy Division, Agricultural Marketing Service, and with the Hearing Clerk, Office of the Secretary, U.S. Department of Agriculture, Washington, D.C. 20250, where they are available for public inspection. A list of qualified associations engaged in marketing milk under a particular milk marketing order is maintained at the office of the market administrator of the order.

§ 900.357 Denial of application; suspension or revocation of determination of qualification.

Any cooperative association whose application has been wholly or partially denied, or whose determination of qualification has been wholly or partly revoked or suspended, may petition the Secretary for a review of such action. Such petition shall state facts relevant to the matter for which review is sought. After due notice to such cooperative association, the Director of the Dairy Division, or in his absence the Acting Director, shall hold, in the manner hereinafter specified, an informal hearing.

(a) *Notice.* Notice shall be given in writing and shall be mailed to the last known address of the association, or of an officer thereof, at least 3 days before the date set for a hearing. Such notice shall contain: A statement of the time and place of the hearing, said place to be as convenient to the association as can reasonably be arranged, and may contain a statement of the reason for calling the hearing and the

nature of the questions upon which evidence is desired or upon which argument may be presented.

(b) *Parties.* Hearings are not to be public and are to be attended only by representatives of the association and of the Government, and such other persons as either the association or the Government desires to have appear for purposes of submitting information or as counsel.

(c) *Conduct of hearing.* The Director or Acting Director of the Dairy Division, or a person designated by him, shall preside at the hearing. The hearing shall be conducted in such manner as will be most conducive to the proper disposition of the matter. Written statements or briefs may be filed by the association within the time specified by the presiding officer.

(d) *Preliminary report.* The presiding officer shall prepare a preliminary report setting forth a recommendation as to what action shall be taken and the basis for such action. A copy of said report shall be served upon the association by mail or in person. The association may file exceptions to said report within 10 days after service thereof.

(e) *Final report.* After due consideration of all the facts and the exceptions, if any, the Director of the Dairy Division shall issue a final report setting forth the action to be taken and the basis for such action.

Subpart—Procedure for the Conduct of Referenda in Connection With Marketing Orders for Fruits, Vegetables, and Nuts Pursuant to the Agricultural Marketing Agreement Act of 1937, as Amended

AUTHORITY: Secs. 1-19, 48 Stat. 31, as amended; 7 U.S.C. 601-674.

SOURCE: 30 FR 15414, Dec. 15, 1965, unless otherwise noted.

§ 900.400 General.

Referenda for the purpose of ascertaining whether the issuance by the Secretary of Agriculture of a marketing order to regulate the handling of any fruit, vegetable, or nut, or product thereof, or the continuance or termination of such an order, is approved or favored by producers or processors shall, unless supplemented or modified by the Secretary, be conducted in accordance with this subpart.

§ 900.401 Definitions.

(a) "Act" means Public Act No. 10, 73d Congress (48 Stat. 31), as amended, and as reenacted and amended by the Agricultural Marketing Agreement Act of 1937 (50 Stat. 246), as amended (7 U.S.C. 601-674).

(b) "Secretary" means the Secretary of Agriculture of the United States, or any officer or employee of the Department to whom authority has heretofore been delegated, or to whom authority may hereafter be delegated, to act in his stead; and "Department" means the United States Department of Agriculture.

(c) "Administrator" means the Administrator of the Agricultural Marketing Service, with power to redelegate, or any officer or employee of the Department to whom authority has been delegated or may hereafter be delegated to act in his stead.

(d) "Order" means the marketing order (including an amendatory order) with respect to which the Secretary has directed that a referendum be conducted.

(e) "Referendum agent" means the individual or individuals designated by the Secretary to conduct the referendum.

(f) "Representative period" means the period designated by the Secretary pursuant to section 8c of the act (7 U.S.C. 608c).

(g) "Person" means any individual, partnership, corporation, association, or other business unit. For the purpose of this definition, the term "partnership" includes (1) a husband and wife who have title to, or leasehold interest in, land as tenants in common, joint tenants, tenants by the entirety, or, under community property laws, as community property, and (2) so-called "joint ventures," wherein one or more parties to the agreement, informal or otherwise, contributed capital and others contribute labor, management, equipment, or other services, or any variation of such contributions by two or more parties, so that it results in

the growing of the commodity for market and the authority to transfer title to the commodity so produced.

(h) "Producer" means any person defined as a producer in the order who: (1) Owns and farms land, resulting in his ownership of the commodity produced thereon; (2) Rents and farms land, resulting in his ownership of all or a portion of the commodity produced thereon; or (3) Owns land which he does not farm and, as rental for such land, obtains the ownership of a portion of the commodity produced thereon. Ownership of, or leasehold interest in, land and the acquisition, in any manner other than as hereinbefore set forth, of legal title to the commodity grown thereon shall not be deemed to result in such owners or lessees becoming producers.

[30 FR 15414, Dec. 15, 1965, as amended at 37 FR 8059, Apr. 25, 1972]

§ 900.402 Voting.

(a) Each person who is a producer, as defined in this subpart, at the time of the referendum and who also was a producer during the representative period, shall be entitled to only one vote in the referendum, except that: (1) In a landlord-tenant relationship, where in each of the parties is a producer, each such producer shall be entitled to one vote in the referendum; and (2) a cooperative association of producers, bona fide engaged in marketing the commodity or product thereof proposed to be regulated, or in rendering services for or advancing the interest of the producers of such commodity or product, may, if it elects to do so, vote, both by number and total volume, for the producers who are members of, stockholders in, or under contract with such association.

(b) Whenever, as required by the act, processors vote on the issuance of an order, each processor who is engaged in canning or freezing within the production area of the commodity covered by the order shall be entitled to vote in the referendum the quantity of such commodity canned or frozen within the production area for market by him during the representative period determined by the Secretary.

(c) Proxy voting is not authorized but an officer or employee of a corporate producer, processor or cooperative association, or an administrator, executor or trustee of a producing estate may cast a ballot on behalf of such producer, processor, estate, or cooperative association. Any individual so voting in a referendum shall certify that he is an officer or employee of the producer, processor, or cooperative association, or an administrator, executor, or trustee of a producing estate, and that he has the authority to take such action. Upon request of the referendum agent, the individual shall submit adequate evidence of such authority.

(d) Each producer, cooperative association of producers, and processor entitled to vote in a referendum shall be entitled to cast one ballot in the referendum. Each producer, cooperative association of producers, and processor casting more than one ballot with conflicting votes shall thereby invalidate all ballots cast by such producer, cooperative association of producers, or processor in such referendum.

§ 900.403 Instructions.

The referendum agent shall conduct the referendum, in the manner herein provided, under supervision of the Administrator. The Administrator may prescribe additional instructions, not inconsistent with the provisions hereof, to govern the procedure to be followed by the referendum agent. Such agent shall:

(a) Determine the time of commencement and termination of the period of the referendum, and the time prior to which all ballots must be cast.

(b) Determine whether ballots may be cast by mail, at polling places, at meetings of producers or processors, or by any combination of the foregoing.

(c) Provide ballots and related material to be used in the referendum. Ballot material shall provide for recording essential information for ascertaining:

(1) Whether the person voting, or on whose behalf the vote is cast, is an eligible voter, and

(2) The total volume (1) produced for market during the representative

period, or (ii) canned or frozen for market during the representative period.

(d) Give reasonable advance notice of the referendum (1) by utilizing without advertising expense available media of public information (including, but not being limited to, press and radio facilities) serving the production area, announcing the dates, places, or methods of voting, eligibility requirements, and other pertinent information, and (2) by such other means as said agent may deem advisable.

(e) Make available to producers and the aforesaid cooperative associations which indicate to the agent their intentions to vote, and to processors when required, instructions on voting, appropriate ballot and certification forms, and, except in the case of a referendum on the termination or continuance of an order, the text of the proposed order and a summary of its terms and conditions: *Provided*, That no person who claims to be qualified to vote shall be refused a ballot.

(f) If ballots are to be cast by mail, cause all the material specified in paragraph (e) of this section to be mailed to each producer (and processor when required) whose name and address is known to the referendum agent.

(g) If ballots are to be cast at polling places or meetings, determine the necessary number of polling or meeting places, designate them, announce the time of each meeting or the hours during which each polling place will be open, provide the material specified in paragraph (e) of this section, and provide for appropriate custody of ballot forms and devlivery to the referendum agent of ballots cast.

(h) At the conclusion of the referendum, canvass the ballots, tabulate the results, and, except as otherwise directed, report the outcome to the Administrator and promptly thereafter submit the following:

(1) All ballots received by the agent and appointees, together with a certificate to the effect that the ballots forwarded are all of the ballots cast and received by such persons during the referendum period;

(2) A list of all challenged ballots deemed to be invalid; and

(3) A tabulation of the results of the referendum and a report thereon, including a detailed statement explaining the method used in giving publicity to the referendum and showing other information pertinent to the manner in which the referendum was conducted.

§ 900.404 Subagents.

The referendum agent may appoint any person or persons deemed necessary or desirable to assist said agent in performing his functions hereunder. Each person so appointed may be authorized by said agent to perform, in accordance with the requirements herein set forth, any or all of the following functions (which, in the absence of such appointment, shall be performed by said agent):

(a) Give public notice of the referendum in the manner specified herein;

(b) Preside at a meeting where ballots are to be cast or as poll officer at a polling place;

(c) Distribute ballots and the aforesaid texts to producers (and to processors when required) and receive any ballots which are cast; and

(d) Record the name and address of each person receiving a ballot from, or casting a ballot with, said subagent and inquire into the eligibility of such person to vote in the referendum.

§ 900.405 Ballots.

The referendum agent and his appointees shall accept all ballots cast; but, should they, or any of them, deem that a ballot should be challenged for any reason, said agent or appointee shall endorse above his signature, on said ballot, a statement to the effect that such ballot was challenged, by whom challenged, the reasons therefor, the results of any investigations made with respect thereto, and the disposition thereof. Invalid ballots shall not be counted.

§ 900.406 Referendum report.

Except as otherwise directed, the Administrator shall prepare and submit to the Secretary a report on results of the referendum, the manner in which it was conducted, the extent and kind of public notice given, and

other information pertinent to analysis of the referendum and its results.

§ 900.407 Confidential information.

All ballots cast and the contents thereof (whether or not relating to the identity of any person who voted or the manner in which any person voted) and all information furnished to, compiled by, or in possession of, the referendum agent shall be treated as confidential.

Subpart—Public Information

AUTHORITY: 5 U.S.C. 301, 552.

SOURCE: 40 FR 20267, May 9, 1975, unless otherwise noted.

AVAILABILITY OF PROGRAM INFORMATION, STAFF MANUALS AND INSTRUCTIONS, AND RELATED MATERIAL

§ 900.500 General.

This subpart is issued in accordance with the regulations of the Secretary of Agriculture in Part 1, Subpart A, of Subtitle A of this Title (7 CFR 1.1-1.16), and Appendix A thereto, implementing the Freedom of Information Act (5 U.S.C. 552). The Secretary's regulations, as implemented by the regulations of this subpart, govern the availability of records of AMS to the public.

§ 900.501 Public inspection and copying.

(a) Facilities for public inspection and copying of the indexes and materials required to be made available under § 1.2(a) of this title will be provided by AMS during normal information should be made to the Freedom of Information Act Officer at the following address:

Freedom of Information Act Officer, Agricultural Marketing Service, United States Department of Agriculture, Washington, D.C. 20250.

(b) Copies of such material may be obtained in person or by mail. Applicable fees for copies will be charged in accordance wth the regulations prescribed by the Director, Office of Operations and Finance, USDA.

[44 FR 39151, July 5, 1979]

§ 900.502 Indexes.

Pursuant to the regulations in § 1.4(b) of this title, AMS will maintain and make available for public inspection and copying current indexes of all material required to be made available in § 1.2(a) of this title. Notice is hereby given that publication of these indexes is unnecessary and impractical, since the material is voluminous and does not change often enough to justify the expense of publication.

[44 FR 39151, July 5, 1979]

§ 900.503 Request for records.

(a) Requests for records under 5 U.S.C. 552(a)(3) shall be made in accordance with § 1.3(a) of this title. Authority to make determinations regarding initial requests in accordance with § 1.4(c) of this title is delegated to the Freedom of Information Act Officer of AMS. Requests should be submitted to the FOIA Officer at the following address:

Freedom of Information Act Officer (FOIA Request), Agricultural Marketing Service, United States Department of Agriculture, Washington, D.C. 20250.

(b) The request shall identify each record with reasonable specificity as prescribed in § 1.3 of this title.

(c) The FOIA Officer is authorized to receive requests and to exercise the authority to (1) make determinations to grant requests or deny initial requests, (2) extend the administrative deadline, (3) make discretinary release of exempt records, and (4) make determinations regarding charges pursuant to the fee schedule.

[44 FR 39151, July 5, 1979]

§ 900.504 Appeals.

Any person whose request under § 900.503 above is denied shall have the right to appeal such denial in accordance with § 1.3(e) of this title. Appeals shall be addressed to the Administrator, Agricultural Marketing Service, U.S. Department of Agriculture, Washington, D.C. 20250.

Subpart—Information Collection

§ 900.600 General.

This subpart shall contain such requirements as pertain to the information collection provisions under the Paperwork Reduction Act of 1980.

(44 U.S.C. Ch. 35)

[49 FR 23826, June 8, 1984]

§ 900.601 OMB control numbers assigned pursuant to the Paperwork Reduction Act.

(a) *Purpose.* This section collects and displays the control numbers assigned to information collection requirements by the Office of Management and Budget contained in 7 CFR Parts 904 through 993 under the Paperwork Reduction Act of 1980.

(b) *Display.*

7 CFR part where identified and described	Current OMB control no.
904, California Desert Grapefruit	0581-0101
905, Florida Oranges, Grapefruit, Tangerines, Tangelos	0581-0094
906, Texas Oranges & Grapefruit	0581-0068
907, California-Arizona Navel Oranges	0581-0116
908, California-Arizona Valencia Oranges	0581-0121
910, California-Arizona Lemons	0581-0120
911, Florida Limes	0581-0091
912, Florida Indian River Grapefruit	0581-0088
913, Florida Interior District Grapefruit	0581-0081
915, Florida Avocados	0581-0078
916, California Nectarines	0581-0072
917, California Pears, Plums & Peaches	0581-0080
918, Georgia Fresh Peaches	0581-0135
919, Mesa County, Colorado, Peaches	0581-0139
921, Washington Peaches	0581-0097
922, Washington Apricots	0581-0095
923, Washington Sweet Cherries	0581-0133
924, Washington-Oregon Fresh Prunes	0581-0134
925, S. E. California Desert Grapes	0581-0109
926, California Tokay Grapes	0581-0075
927, Oregon-Washington-California Winter Pears	0581-0089
928, Hawaiian Papayas	0581-0102
929, Cranberries Grown in Designated States	0581-0103
930, Red Tart Cherries	0581-0104
931, Oregon-Washington Bartlett Pears	0581-0092
932, California Olives	0581-0142
945, Idaho-Eastern Oregon Potatoes	0581-0089
946, Washington Potatoes	0581-0070
947, Oregon-California Potatoes	0581-0112
948, Colorado Potatoes	0581-0111
953, Southeastern Potatoes	0581-0084
958, Idaho-Oregon Onions	0581-0087
959, South Texas Onions	0581-0074
966, Florida Tomatoes	0581-0073
967, Florida Celery	0581-0145
971, South Texas Lettuce	0581-0085
979, South Texas Melons	0581-0079
981, California Almonds	0581-0071
982, Oregon-Washington Filberts/Hazelnuts	0581-0144
984, California Walnuts	0581-0090
985, Spearmint Oil	0581-0065
987, California Dates	0581-0077
989, California Raisins	0581-0083
991, Hops	0581-0086
993, California Dried Prunes	0581-0099

(44 U.S.C. Ch. 35)

[49 FR 23826, June 8, 1984]

PART 905—ORANGES, GRAPEFRUIT, TANGERINES, AND TANGELOS GROWN IN FLORIDA

Subpart—Order Regulating Handling

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AUTHORITY: Secs. 1-19, 48 Stat. 31, as amended; 7 U.S.C. 601-674, unless otherwise noted.

Subpart—Order Regulating Handling

SOURCE: 22 FR 10734, Dec. 27, 1957, unless otherwise noted. Redesignated at 26 FR 12751, Dec. 30, 1961.

DEFINITIONS

§ 905.1 Secretary.

"Secretary" means the Secretary of Agriculture of the United States, or any officer or employee of the United States Department of Agriculture to whom authority has heretofore been delegated, or to whom authority may hereafter be delegated, to act in his stead.

[42 FR 59368, Nov. 17, 1977]

§ 905.2 Act.

"Act" means Public Act No. 10, 73d Congress (May 12, 1933), as amended and as reenacted and amended by the Agricultural Marketing Agreement Act of 1937, as amended. (48 Stat. 31, as amended; 7 U.S.C. 601 et seq.; 68 Stat. 906, 1047.)

§ 905.3 Person.

"Person" means an individual, partnership, corporation, association, business trust, legal representative, or any organized group of individuals.

§ 905.4 Fruit.

"Fruit" means any or all varieties of the following types of citrus fruits grown in the production area:

(a) Citrus sinensis, Osbeck, commonly called "oranges";

(b) Citrus paradisi, MacFadyen, commonly called "grapefruit";

(c) Citrus nobilis deliciosa, commonly called "tangerines";

(d) Temple oranges;

(e) Tangelos; and

(f) Honey tangerines.

[30 FR 13933, Nov. 4, 1965, as amended at 42 FR 59368, Nov. 17, 1977]

§ 905.5 Variety.

"Variety" or "varieties" means any one or more of the following classifications or groupings of fruit:

(a) Early and Midseason oranges and other types commonly called "round oranges," except Navel oranges and except Valencia, Lue Gim Gong, and similar late maturing oranges of the Valencia type;

(b) Valencia, Lue Gim Gong, and similar late maturing oranges of the Valencia type;

(c) Temple oranges;

(d) Marsh and other seedless grapefruit, excluding pink grapefruit;

(e) Duncan and other seeded grapefruit, excluding pink grapefruit;

(f) Pink seedless grapefruit;
(g) Pink seeded grapefruit;
(h) Tangelos;
(i) Dancy and similar tangerines, excluding Robinson and Honey tangerines;
(j) Robinson tangerines;
(k) Honey tangerines;
(l) Navel oranges; and
(m) Other varieties of citrus fruits specified in § 905.4 as recommended by the committee and approved by the Secretary.

[34 FR 12427, July 30, 1969, as amended at 42 FR 59368, Nov. 17, 1977; 42 FR 61853, Dec. 7, 1977]

§ 905.6 Producer.

"Producer" is synonymous with "grower" and means any person who is engaged in the production for market of fruit in the production area and who has a proprietary interest in the fruit so produced.

[42 FR 59368, Nov. 17, 1977]

§ 905.7 Handler.

"Handler" is synonymous with "shipper" and means any person (except a common or contract carrier transporting fruit for another person) who, as owner, agent, or otherwise, handles fruit in fresh form, or causes fruit to be handled.

§ 905.8 Prepare for market.

"Prepare for market" means to wash, grade, size, or place fruit (whether or not wrapped) into any container whatsoever; but such term shall not include the harvesting of fruit.

§ 905.9 Handle or ship.

"Handle or ship" means (a) to sell, consign, deliver, or transport fruit, or in any other way to place fruit, in the current of the commerce between the production area and any point outside thereof in the continental United States, Canada, or Mexico; and (b) to export fruit from any continental United States port to any destination other than Canada or Mexico.

§ 905.10 Carton or standard packed carton.

"Carton or standard packed carton" means a unit of measure equivalent to four-fifths (⅘) of a United States bushel of fruit, whether in bulk or in any container.

[42 FR 59368, Nov. 17, 1977]

§ 905.11 Fiscal period.

"Fiscal period" means the period of time from August 1 of any year until July 31 of the following year, both dates inclusive.

§ 905.12 Committee.

"Committee" means the Citrus Administrative Committee established pursuant to § 905.19.

[42 FR 59368, Nov. 17, 1977]

§ 905.13 District.

(a) "Citrus District One" shall include the Counties of Hillsborough, Pinellas, Pasco, Hernando, Citrus, Sumter, and Lake.
(b) "Citrus District Two" shall include the Counties of Osceola, Orange, Seminole, Alachua, Putnam, St. Johns, Flagler, Marion, Levy, Duval, Nassau, Baker, Union, Bradford, Columbia, Clay, Gilchrist, and Suwannee, and County Commissioner, Districts One, Two, and Three of Volusia County, and that part of the Counties of Indian River and Brevard not included in Regulation Area II.
(c) "Citrus District Three" shall include the County of St. Lucie and that part of the Counties of Brevard, Indian River, Martin, and Palm Beach described as lying within Regulation Area II, and County Commissioner's Districts Four and Five of Volusia County.
(d) "Citrus District Four" shall include the Counties of Manatee, Sarasota, Hardee, Highlands, Okeechobee, Glades, De Sota, Charlotte, Lee, Hendry, Collier, Monroe, Dade, Broward, and that part of the Counties of Palm Beach and Martin not included in Regulation Area II.
(e) "Citrus District Five" shall include the County of Polk.

[42 FR 59368, Nov. 17, 1977]

§ 905.14 Redistricting.

The committee may with the approval of the Secretary, redefine the districts into which the production area is divided or reapportion or otherwise change the grower membership of districts, or both: *Provided*, That the membership shall consist of at least eight but not more than nine grower members, and any such change shall be based, so far as practicable, upon the respective averages for the immediately preceding five fiscal periods of (1) the volume of fruit shipped from each district; (2) the volume of fruit produced in each district; and (3) the total number of acres of citrus in each district. The committee shall consider such redistricting and reapportionment during the 1980-81 fiscal period, and only in each fifth fiscal period thereafter, and each such redistricting or reapportionment shall be announced on or before March 1 of the then current fiscal period.

[42 FR 59368, Nov. 17, 1977]

§ 905.15 Regulation Area I.

"Regulation Area I" shall include all that part of the production area not included in Regulation Area II.

[22 FR 10734, Dec. 27, 1957. Redesignated at 26 FR 12751, Dec. 30, 1961, and 42 FR 59368, Nov. 17, 1977]

§ 905.16 Regulation Area II.

"Regulation Area II" shall include that part of the State of Florida particularly described as follows:

Beginning at a point on the shore of the Atlantic Ocean where the line between Flagler and Volusia Counties intersects said shore, thence follow the line between said two counties to the Southwest corner of Section 23, Township 14 South, Range 31 East; thence continue South to the Southwest corner of Section 35, Township 14 South, Range 31 East; thence East to the Northwest corner of Township 15 South, Range 32 East; thence South to the Southwest corner of Township 17 South, Range 32 East; thence East to the Northwest corner of Township 18 South, Range 33 East; thence South to the St. Johns River; thence along the main channel of the St. Johns River and through Lake Harney, Lake Poinsett, Lake Winder, Lake Washington, Sawgrass Lake, and Lake Helen Blazes to the range line between Ranges 35 East and 36 East; thence South to the South line of Brevard County; thence East to the line between Ranges 36 East and 37 East; thence South to the Southwest corner of St. Lucie County; thence East to the line between Ranges 39 East and 40 East; thence South to the South line of Martin County; thence East to the line between Ranges 40 East and 41 East; thence South to the West Palm Beach Canal (also known as the Okeechobee Canal); thence follow said canal eastward to the mouth thereof; thence East to the shore of the Atlantic Ocean; thence Northerly along the shore of the Atlantic Ocean to the point of beginning.

[22 FR 10734, Dec. 27, 1957. Redesignated at 26 FR 12751, Dec. 30, 1961, and 42 FR 59368, Nov. 17, 1977, and amended at 42 FR 59370, Nov. 17, 1977]

§ 905.17 Production area.

"Production area" means that portion of the State of Florida which is bounded by the Suwannee River, the Georgia border, the Atlantic Ocean, and the Gulf of Mexico.

[22 FR 10734, Dec. 27, 1957. Redesignated at 26 FR 12751, Dec. 30, 1961, and 42 FR 59368, Nov. 17, 1977]

§ 905.18 Improved No. 2 grade and Improved No. 2 Bright grade.

"Improved No. 2 grade" and "Improved No. 2 Bright grade" means grapefruit meeting all of the respective requirements of the U.S. No. 2 grade and the U.S. No. 2 Bright grade and those requirements of the U.S. No. 1 grade relating to shape (form) and color, as such requirements are set forth in the U.S. Standards for Grades of Florida Grapefruit (§§ 51.750-51.783 of this title) or as such standards may hereafter be amended.

[31 FR 15060, Dec. 1, 1966. Redesignated at 42 FR 59368, Nov. 17, 1977]

ADMINISTRATIVE BODIES

§ 905.19 Establishment and membership.

(a) There is hereby established a Citrus Administrative Committee consisting of at least 8 but not more than 9 grower members, and 8 shipper members. Grower members shall be persons who are not shippers or employees of shippers. Shipper members shall be shippers and employees of shippers. The committee may be increased by one non-industry member nominated by the committee and se-

lected by the Secretary. The committee, with the approval of the Secretary, shall prescribe qualifications, term of office, and the procedure for nominating the non-industry member.

(b) Each member shall have an alternate who shall have the same qualifications as the member for whom he is an alternate.

[42 FR 59369, Nov. 17, 1977]

§ 905.20 Term of office.

The term of office of members and alternate members shall begin on the first day of August and continue for one year and until their successors are selected and have qualified. The consecutive terms of office of a member shall be limited to three terms. The terms of office of alternate members shall not be so limited. Members, their alternates, and their respective successors shall be nominated and selected by the Secretary as provided in §§ 905.22 and 905.23.

[42 FR 59369, Nov. 17, 1977]

§ 905.21 Selection of initial members of the committee.

The initial members of the Citrus Administrative Committee and their respective alternates shall be the members and alternates of the Growers Administrative Committee and the Shippers Advisory Committee serving on the effective date of his amendment. Each member and alternate shall serve until completion of the term for which he was selected and until his successor has been selected and qualified.

[42 FR 59369, Nov. 17, 1977]

§ 905.22 Nominations.

(a) *Grower member.* (1) The committee shall give public notice of a meeting of producers in each district to be held not later than July 10 of each year, for the purpose of making nominations for grower members and alternate grower members. The committee, with the approval of the Secretary, shall prescribe uniform rules to govern such meetings and the balloting thereat. The chairman of each meeting shall publicly announce at such meeting the names of the persons nominated, and the chairman and secretary of each such meeting shall transmit to the Secretary their certification as to the number of votes so cast, the names of the persons nominated, and such other information as the Secretary may request. All nominations shall be submitted to the Secretary on or before the 20th day of July.

(2) Each nominee shall be a producer in the district from which he is nominated. In voting for nominees, each producer shall be entitled to cast one vote for each nominee in each of the districts in which he is a producer. At least three of the nominees and their alternates so nominated shall be affiliated with a bona fide cooperative marketing organization.

(b) *Shipper members.* (1) the Committee shall give public notice of a meeting for bona fide cooperative marketing organizations which are handlers, and a meeting for other handlers who are not so affiliated, to be held not later than July 10 of each year, for the purpose of making nominations for shipper members and their alternates. The committee, with the approval of the Secretary, shall prescribe uniform rules to govern each such meeting and balloting thereat. The chairman of each such meeting shall publicly announce at the meeting the names of the persons nominated and the chairman and secretary of each such meeting shall transmit to the Secretary their certification as to the number of votes cast, the weight by volume of those shipments voted, and such other information as the Secretary may request. All nominations shall be submitted to the Secretary on or before the 20th day of July.

(2) Nomination of at least three members and their alternates shall be made by bona fide cooperative marketing organizations which are handlers. Nominations for not more than five members and their alternates shall be made by handlers who are not so affiliated. In voting for nominees, each handler or his authorized representative shall be entitled to cast one vote, which shall be weighted by the volume of fruit by such handler during the then current fiscal period.

[42 FR 59369, Nov. 17, 1977]

§ 905.23 Selection.

(a) From the nominations made pursuant to § 905.22(a) or from other qualified persons, the Secretary shall select one member and one alternate member to represent District 2 and two members and two alternate members each to represent District, 1, 3, 4, and 5 or such other number of members and alternate members from each district as may be prescribed pursuant to § 905.14. At least three such members and their alternates shall be affiliated with bona fide cooperative marketing organizations.

(b) From the nominations made pursuant to § 905.22(b) or from other qualified persons, the Secretary shall select at least three members and their alternates to represent bona fide cooperative marketing organizations which are handlers, and the remaining members and their alternates to represent handlers who are not so affiliated.

[42 FR 59369, Nov. 17, 1977]

§ 905.27 Failure to nominate.

In the event nominations for a member or alternate member of the committee are not made pursuant to the provisions of §§ 905.22 and 905.25, the Secretary may select such member or alternate member without regard to nominations.

[22 FR 10734, Dec. 27, 1957. Redesignated at 26 FR 12751, Dec. 30, 1961, and amended at 42 FR 59370, Nov. 17, 1977]

§ 905.28 Acceptance of membership.

Any person selected by the Secretary as a member or alternate member of the committee shall qualify by filing a written acceptance with the Secretary within 10 days after being notified of such selection.

[22 FR 10734, Dec. 27, 1957. Redesignated at 26 FR 12751, Dec. 30, 1961, and amended at 42 FR 59370, Nov. 17, 1977]

§ 905.29 Inability of members to serve.

(a) An alternate for a member of the committee shall act in the place and stead of such member (1) in his absence, or (2) in the event of his removal, resignation, disqualification, or death, and until a successor for his unexpired term has been selected.

(b) In the event of the death, removal, resignation, or disqualification of any person selected by the Secretary as a member or an alternate member of the committee, a successor for the unexpired term of such person shall be selected by the Secretary. Such selection may be made without regard to the provisions of this subpart as to nominations.

[22 FR 10734, Dec. 27, 1957. Redesignated at 26 FR 12751, Dec. 30, 1961, and amended at 42 FR 59370, Nov. 17, 1977]

§ 905.30 Powers of the committee.

The committee, in addition to the power to administer the terms and provisions of this subpart, as herein specifically provided, shall have power (a) to make, only to the extent specifically permitted by the provisions contained in this subpart, administrative rules and regulations; (b) to receive, investigate and report to the Secretary complaints of violations of this subpart; and (c) to recommend to the Secretary amendments to this subpart.

[22 FR 10734, Dec. 27, 1957. Redesignated at 26 FR 12751, Dec. 30, 1961, and amended at 42 FR 59370, Nov. 17, 1977]

§ 905.31 Duties of Citrus Administrative Committee.

It shall be the duty of the Citrus Administrative Committee:

(a) To select a chairman from its membership, and to select such other officers and adopt such rules and regulations for the conduct of its business as it may deem advisable;

(b) To keep minutes, books, and records which will clearly reflect all of its acts and transactions, which minutes, books, and records shall at all times be subject to the examination of the Secretary;

(c) To act as intermediary between the Secretary and the producers and handlers;

(d) To furnish the Secretary with such available information as he may request;

(e) To appoint such employees as it may deem necessary and to determine the salaries and define the duties of such employees;

(f) To cause its books to be audited by one or more certified or registered

public accountants at least once for each fiscal period, and at such other times as it deems necessary or as the Secretary may request, and to file with the Secretary copies of all audit reports;

(g) To prepare and publicly issue a monthly statement of financial operations of the committee;

(h) To provide an adequate system for determining the total crop of each variety of fruit, and to make such determinations, including determinations by grade and size, as it may deem necessary, or as may be prescribed by the Secretary, in connection with the administration of this subpart;

(i) To perform such duties in connection with the administration of section 32 of the act to amend the Agricultural Adjustment Act and for other purposes, Public Act No. 320, 74th Congress, as amended, as may from time to time be assigned to it by the Secretary;

[22 FR 10734, Dec. 27, 1957. Redesignated at 26 FR 12751, Dec. 30, 1961, and amended at 30 FR 13934, Nov. 4, 1965; 42 FR 59369, Nov. 17, 1977]

§ 905.33 Compensation and expenses of committee members.

The members and alternate members of the Committee shall serve without compensation but may be reimbursed for expenses necessarily incurred by them in attending committee meetings and in the performance of their duties under this part.

[42 FR 59369, Nov. 17, 1977]

§ 905.34 Procedure of committees.

(a) Ten members of the committee shall constitute a quorum.

(b) For any decision or recommendation of the committee to be valid, ten concurring votes, five of which must be grower votes, shall be necessary: *Provided,* That the committee may recommend a regulation restricting the shipment of grapefruit grown in Regulation Area I or Regulation Area II which meets the requirements of the Improved No. 2 grade or the Improved No. 2 Bright grade only upon the affirmative vote of a majority of its members present from the regulation area in which such restriction would apply; and whenever a meeting to consider a recommendation for release of such grade is requested by a majority of the members from the affected area, the committee shall hold a meeting within a reasonable length of time for the purpose of considering such a recommendation. If after such consideration the requesting area majority present continues to favor such release for their area, the request shall be considered a valid recommendation and transmitted to the Secretary. The votes of each member cast for or against any recommendation made pursuant to this subpart shall be duly recorded. Whenever an assembled meeting is held each member must vote in person.

(c) The committee may, in cases of emergency, vote by telephone and all such votes must be confirmed in writing. Any proposition so voted upon shall first be fully explained to all members or alternates acting as members. When any proposition is submitted to be voted on by telephone, two (2) dissenting votes shall prevent its adoption.

(d) The committee shall give the Secretary the same notice of meetings as is given to the members thereof.

[42 FR 59369, Nov. 17, 1977]

§ 905.35 Right of the Secretary.

The members of the committee (including successors and alternates), and any agent or employee appointed or employed by the committee, shall be subject to removal or suspension by the Secretary at any time. Each and every order, regulation, decision, determination, or other act of the committee shall be subject to the continuing right of the Secretary to disapprove of the same at any time and upon his disapproval shall be deemed null and void, except as to acts done in reliance thereon or in compliance therewith.

[22 FR 10734, Dec. 27, 1957. Redesignated at 26 FR 12751, Dec. 30, 1961, and amended at 42 FR 59370, Nov. 17, 1977]

§ 905.36 Funds.

(a) All funds received by the committee pursuant to any provision of this subpart shall be used solely for

the purposes herein specified and shall be accounted for in the manner provided in this subpart.

(b) The Secretary may, at any time, require the committee and its members to account for all receipts and disbursements.

(c) Upon the removal or expiration of the term of office of any member of the committee, such member shall account for all receipts and disbursements and deliver all property and funds, together with all books and records, in his possession, to his successor in office, and shall execute such assignments and other instruments as may be necessary or appropriate to vest in such successor full title to all of the property, funds, and claims vested in such member pursuant to this subpart.

[22 FR 10734, Dec. 27, 1957. Redesignated at 26 FR 12751, Dec. 30, 1961, and amended at 42 FR 59370, Nov. 17, 1977]

EXPENSES AND ASSESSMENTS

§ 905.40 Expenses.

The committee is authorized to incur such expenses as the Secretary finds are reasonable and likely to be incurred to carry out the functions of the committee under this subpart during each fiscal period. The funds to cover such expenses shall be acquired by the levying of assessments upon handlers as provided in § 905.41.

[22 FR 10734, Dec. 27, 1957. Redesignated at 26 FR 12751, Dec. 30, 1961, and amended at 42 FR 59370, Nov. 17, 1977]

§ 905.41 Assessments.

(a) Each handler who first handles fruit shall pay to committee, upon demand, such handler's pro rata share of the expenses which the Secretary finds will be incurred by the committee for the maintenance and functioning, during each fiscal period, of the committee established under this subpart. Each such handler's share of such expenses shall be that proportion thereof which the total quantity of fruit shipped by such handler as the first handler thereof during the applicable fiscal period is of the total quantity of fruit so shipped by all handlers during the same fiscal period. The Secretary shall fix the rate of assessment per standard packed carton of fruit to be paid by each such handler. The payment of assessments for the maintenance and functioning of the committee may be required under this part throughout the period it is in effect irrespective of whether particular provisions thereof are suspended or become inoperative.

(b) At any time during or after the fiscal period, the Secretary may increase the rate of assessment so that the sum of money collected pursuant to the provisions of this section shall be adequate to cover the said expenses. Such increase shall be applicable to all fruit shipped during the given fiscal period. In order to provide funds to carry out the functions of the committee established under § 905.19, handlers may make advance payment of assessments.

[22 FR 10734, Dec. 27, 1957. Redesignated at 26 FR 12751, Dec. 30, 1961, and amended at 42 FR 59370, Nov. 17, 1977]

§ 905.42 Handler's accounts.

(a) If, at the end of a fiscal period, the assessments collected are in excess of expenses incurred, the committee, with the approval of the Secretary, may carry over such excess into subsequent fiscal periods as a reserve: *Provided,* That funds already in the reserve do not exceed approximately one-half of one fiscal period's expenses. Such reserve funds may be used (1) to cover any expenses authorized by this part and (2) to cover necessary expenses of liquidation in the event of termination of this part. If any such excess is not retained in a reserve, each handler entitled to a proportionate refund shall be credited with such refund against the operations of the following fiscal period unless he demands payment of the sum due him, in which case such sum shall be paid to him. Upon termination of this part, any funds not required to defray the necessary expenses of liquidation shall be disposed of in such manner as the Secretary may determine to be appropriate: *Provided,* That to the extent practical, such funds shall be returned pro rata to the persons from whom such funds were collected.

(b) The committee may, with the approval of the Secretary, maintain in its own name or in the name of its members a suit against any handler for the collection of such handler's pro rata share of the said expense.

[22 FR 10734, Dec. 27, 1957. Redesignated at 26 FR 12751, Dec. 30, 1961, and amended at 34 FR 12427, July 30, 1969; 42 FR 59371, Nov. 17, 1977]

Regulations

§ 905.50 Marketing policy.

(a) Before making any recommendations pursuant to § 905.51 for any variety of fruit, the committee shall, with respect to the regulations permitted by § 905.52, submit to the Secretary a detailed report setting forth an advisable marketing policy for such variety for the then current shipping season. Such report shall set forth the proportion of the remainder of the total crop of such variety of fruit (determined by the committee to be available for shipment during the remainder of the shipping season of such variety) deemed advisable by the committee to be shipped during such season.

(b) In determining each such marketing policy and advisable proportion, the committee shall give due consideration to the following factors relating to citrus fruit produced in Florida and in other States: (1) The available crop of each variety of citrus fruit in Florida, and in other States, including the grades and sizes thereof, which grades and sizes in Florida shall be determined by the committee pursuant to § 905.31; (2) the probable shipments of citrus fruit from other States; (3) the level and trend in consumer income; (4) the prospective supplies of competitive commodities; and (5) other pertinent factors bearing on the marketing of fruit.

(c) In addition to the foregoing, the committees shall set forth a schedule of proposed regulations for the remainder of the shipping season for each variety of fruit for which recommendations to the Secretary pursuant to § 905.51 are contemplated. Such schedules shall recognize the practical operations of harvesting and preparation for market of each variety and the change in grades and sizes thereof as the respective seasons advance. In the event it is deemed advisable to alter such marketing policy or advisable proportion as the shipping season progresses, in view of changed demand and supply conditions with respect to fruit, the said committee shall submit to the Secretary a report thereon.

(d) The committee shall transmit a copy of each marketing policy report or revision thereof to the Secretary and to each producer and handler who files a request therefor. Copies of all such reports shall be maintained in the office of the committee where they shall be available for examination by producers and handlers.

[22 FR 10734, Dec. 27, 1957. Redesignated at 26 FR 12751, Dec. 30, 1961, and amended at 30 FR 13934, Nov. 4, 1965; 42 FR 59371, Nov. 17, 1977]

§ 905.51 Recommendations for regulation.

(a) Whenever the committee deems it advisable to regulate any variety in the manner provided in § 905.52, it shall give due consideration to the following factors relating to the citrus fruit produced in Florida and in other States: (1) Market prices, including prices by grades and sizes of the fruit for which regulation is recommended; (2) maturity, condition, and available supply, including the grade and size thereof in the producing areas; (3) other pertinent market information; and (4) the level and trend in consumer income. The committee shall submit to the Secretary its recommendations and supporting information respecting the factors enumerated in this section.

(b) The committee shall give notice of any meeting to consider the recommendation of regulations pursuant to § 905.52 by mailing a notice of meeting to each handler who has filed his address with committee for this purpose. The committee shall give the same notice of any such recommendation before the time it is recommended that such regulation become effective.

[42 FR 59370, Nov. 17, 1977]

§ 905.52 Issuance of regulations.

(a) Whenever the Secretary shall find from the recommendations and reports of the committee, or from

other available information, that to limit the shipment of any variety would tend to effectuate the declared policy of the act, he shall so limit the shipment of such variety during a specified period or periods. Such regulations may:

(1) Limit the shipments of any grade or size, or both, of any variety, in any manner as may be prescribed, and any such limitation may provide that shipments of any variety grown in Regulation Area II shall be limited to grades and sizes different from the grade and size limitations applicable to shipments of the same varieties grown in Regulation Area I: *Provided,* That whenever any such grade or size limitation restricts the shipment of a portion of a specified grade or size of a variety the quantity of such grade or size that may be shipped by a handler during a particular week shall be established as a percentage of the total shipments of such variety by such handler in such prior period established by the committee with the approval of the Secretary, in which he shipped such variety.

(2) Limit the shipment of any variety by establishing and maintaining, only in terms of grades or sizes, or both, minimum standards of quality and maturity;

(3) Limit the shipment of the total quantity of any variety by prohibiting the shipment thereof: *Provided,* That no such prohibition shall apply to exports other than to Canada or Mexico or be effective during any fiscal period with respect to any variety other than for one period not exceeding 5 days during the week in which Thanksgiving Day occurs, and for not more than two periods not exceeding a total of 14 days during the period December 20, to January 20, both dates inclusive.

(4) Provide that exports of any variety, other than to Canada and Mexico, shall be limited to grades and sizes different from the grade and size limitation applicable to shipments of such variety in the United States, or to Canada and Mexico, and specify condition requirements for such variety; and

(5) Fix the size, capacity, weight, dimensions, or pack of the container or containers which may be used in the shipment of fruit for export, other than to Canada and Mexico: *Provided,* That such regulation shall not authorize the use of any container which is prohibited for use for fruit under the provisions of Chapter 601 of the Florida Statutes and regulations effective thereunder.

(b) Prior to the beginning of any such regulations, the Secretary shall notify the committee of the regulation issued by him, and the committee shall notify all handlers by mailing a copy thereof to each handler who has filed his address with said committee for this purpose.

(c) Whenever the Secretary finds from the recommendations and reports of the committee, or from other available information, that a regulation should be modified, suspended, or terminated with respect to any or all shipments of fruit in order to effectuate the declared policy of the act, he shall so modify, suspend, or terminate such regulation. If the Secretary finds that a regulation obstructs or does not tend to effectuate the declared policy of the act, he shall suspend or terminate such regulation. On the same basis, and in like manner, the Secretary may terminate any such modification or suspension.

(d) Whenever any variety is regulated pursuant to paragraph (a)(3) of this section, no such regulation shall be deemed to limit the right of any person to sell, contract to sell, or export other than to Canada or Mexico such variety but no handler shall otherwise ship any fruit of such variety which was prepared for market during the effective period of such regulation.

[22 FR 10734, Dec. 27, 1957. Redesignated at 26 FR 12751, Dec. 30, 1961, and amended at 34 FR 12427, July 30, 1969; 42 FR 59370, Nov. 17, 1977]

§ 905.53 Inspection and certification.

(a) Whenever the handling of a variety of a type of fruit is regulated pursuant to § 905.52, each handler who handles any variety of such type of fruit shall, prior to the handling of any lot of such variety, cause such lot to be inspected by the Federal-State Inspection Service and certified by it

as meeting all applicable requirements of such regulation: *Provided*, That such inspection and certification shall not be required if the particular lot of fruit previously had been so inspected and certified unless such prior inspection was not performed within such time limitations as may be prescribed pursuant to paragraph (b) of this section. Each handler shall promptly submit, or cause to be submitted, to the committee a copy of each certificate of inspection issued to him covering varieties so handled.

(b) With respect to any variety regulated pursuant to § 905.52(a)(4), the committee may prescribe, with the approval of the Secretary, such requirements with respect to time of inspection as it may deem necessary to insure satisfactory condition of the fruit at time of export.

[22 FR 10734, Dec. 27, 1957. Redesignated at 26 FR 12751, Dec. 30, 1961, and amended at 42 FR 59371, Nov. 17, 1977]

Handlers' Reports

§ 905.70 Manifest report.

The committee may request information from each handler regarding the variety, grade, and size of each standard packed carton of fruit shipped by him and may require such information to be mailed or delivered to the committee or its duly authorized representative, within 24 hours after such shipment is made, in a manner or by such method as the said committee may prescribe, and upon such forms as may be prepared by it.

[42 FR 59371, Nov. 17, 1977]

§ 905.71 Other information.

Upon request of the committee, made with the approval of the Secretary, every handler shall furnish the committee, in such manner and at such times as it prescribes, such other information as will enable it to perform its duties under this subpart.

[22 FR 10734, Dec. 27, 1957. Redesignated at 26 FR 12751, Dec. 30, 1961, and amended at 42 FR 59371, Nov. 17, 1977]

Miscellaneous Provisions

§ 905.80 Fruit not subject to regulation.

Except as otherwise provided in this section, any person may, without regard to the provisions of §§ 905.52 and 905.53 and the regulations issued thereunder, ship any variety for the following purposes: (a) To a charitable institution for consumption by such institution; (b) to a relief agency for distribution by such agency; (c) to a commercial processor for conversion by such processor into canned or frozen products or into a beverage base; (d) by parcel post; or (e) in such minimum quantities, types of shipments, or for such purposes as the committee with the approval of the Secretary may specify. No assessment shall be levied on fruit so shipped. The committee shall, with the approval of the Secretary, prescribe such rules, regulations, or safeguards as it may deem necessary to prevent varieties handled under the provisions of this section from entering channels of trade for other than the purposes authorized by this section. Such rules, regulations, and safeguards may include the requirements that handlers shall file applications with the committee for authorization to handle a variety pursuant to this section, and that such applications be accompanied by a certification by the intended purchaser or receiver that the variety will not be used for any purpose not authorized by this section.

[22 FR 10734, Dec. 27, 1957. Redesignated at 26 FR 12751, Dec. 30, 1961, and amended at 42 FR 59371, Nov. 17, 1977]

§ 905.81 Compliance.

Except as provided in this part, no person shall ship fruit the shipment of which has been prohibited by the Secretary in accordance with the provisions of this part.

§ 905.82 Effective time.

The provisions of this subpart shall become effective on and after 12:01 a.m., e.s.t., September 1, 1946, and shall continue in force until terminated in one of the ways specified in § 905.83.

§ 905.83 Termination.

(a) The Secretary may at any time terminate the provisions of this part by giving at least one day's notice by means of a press release or in any other manner which he may determine.

(b) The Secretary shall terminate the provisions of this part at the end of any fiscal period whenever he finds that such termination is favored by a majority of producers who, during the preceding fiscal period, have been engaged in the production for market of fruit: *Provided,* That such majority have, during such period, produced for market more than 50 percent of the volume of such fruit produced for market, but such termination shall be effective only if announced on or before July 31 of the then current fiscal period.

(c) The provisions of this part shall, in any event, terminate whenever the provisions of the act authorizing it cease to be in effect.

§ 905.84 Proceedings after termination.

(a) Upon the termination of the provisions of this part, the then functioning members of the committee shall continue as joint trustees, for the purpose of liquidating the affairs of the committee, of all the funds and property then in the possession of or under control of committee, including claims for any funds unpaid or property not delivered at the time of such termination.

(b) The said trustees (1) shall continue in such capacity until discharged by the Secretary, (2) shall, from time to time, account for all receipts and disbursements or deliver all property on hand, together with all books and records of the committee and of the joint trustees, to such person as the Secretary may direct; and (3) shall, upon the request of the Secretary, execute such assignments or other instruments necessary or appropriate to vest in such person full title and right to all of the funds, property, and claims vested in the committee, or the joint trustees pursuant to this part.

(c) Any funds collected pursuant to § 905.41, over and above the amounts necessary to meet outstanding obligations and expenses necessarily incurred during the operation of this part and during the liquidation period, shall be returned to handlers as soon as practicable after the termination of this part. The refund to each handler shall be represented by the excess of the amount paid by him over and above his pro rata share of the expenses.

(d) Any person to whom funds, property, or claims have been transferred or delivered by the committee or its members, pursuant to this section, shall be subject to the same obligations imposed upon the members of the committee and upon the said joint trustees.

[22 FR 10734, Dec. 27, 1957. Redesignated at 26 FR 12751, Dec. 30, 1961, and amended at 42 FR 59371, Nov. 17, 1977]

§ 905.85 Duration of immunities.

The benefits, privileges, and immunities conferred upon any person by virtue of this part shall cease upon its termination, except with respect to acts done under and during the existence of this part.

§ 905.86 Agents.

The Secretary may, by designation in writing, name any person, including any officer or employee of the Government, or name any bureau or division in the United States Department of Agriculture, to act as his agent or representative in connection with any of the provisions of this part.

§ 905.87 Derogation.

Nothing contained in this part is, or shall be construed to be in derogation or in modification of the rights of the Secretary or of the United States (a) to exercise any powers granted by the act or otherwise, or (b) in accordance with such powers, to act in the premises whenever such action is deemed advisable.

§ 905.88 Personal liability.

No member or alternate of the committee nor any employee or agent thereof, shall be held personally responsible, either individually or jointly with others, in any way whatsoever, to any handler or to any other person for errors in judgment, mistakes, or other

acts, either of commission or omission, as such member, alternate, or employee, except for acts of dishonesty.

[22 FR 10734, Dec. 27, 1957. Redesignated at 26 FR 12751, Dec. 30, 1961, and amended at 42 FR 59371, Nov. 17, 1977]

§ 905.89 Separability.

If any provision of this part is declared invalid, or the applicability thereof to any person, circumstance, or thing is held invalid, the validity of the remainder of this part or the applicability thereof to any other person, circumstance, or thing shall not be affected thereby.

Subpart—Rules and Regulations

SOURCE: 42 FR 59371, Nov. 17, 1977, unless otherwise noted.

§ 905.120 Nomination procedure.

Meetings shall be called by the committee in accordance with the provisions of § 905.22, for the purpose of making nominations for members and alternate members of the Citrus Administrative Committee. The manner of nominating members and alternate members of said committee shall be as follows:

(a) At each such meeting the committee's representative shall announce the requirements as to eligibility for voting for nominees and the procedure for voting, and shall explain the duties of the committee.

(b) A chairman and a secretary of each meeting shall be selected.

(c) At each meeting there shall be presented for nomination and there shall be nominated not less than the number of nominees required under the provisions of § 905.19, all of whom shall have the qualifications as specified in § 905.22.

(d) At the meetings of handlers, any person authorized to represent a handler may cast a ballot for such handler.

(e) At each meeting each eligible person may cast one vote for each of the persons to be nominated to represent the district or group, as the case may be.

(f) Voting may be by written ballot. If written ballots are used, all ballots shall be delivered by the chairman or the secretary of the meeting to the agent of the Secretary. If ballots are not used, the committee's representative shall deliver to the Secretary's agent a listing of each person nominated and a count of the number of votes cast for each nominee for grower member and alternate. Said representative shall also provide the agent the register of eligible voters present at each meeting, a listing of each person nominated, the number of votes cast, and the weight by volume of shipments voted for each nominee for shipper member and alternate.

[43 FR 9455, Mar. 8, 1979]

NON-REGULATED FRUIT

§ 905.140 Gift packages.

During any day any handler may, without regard to the provisions of §§ 905.52 and 905.53 and the regulations issued thereunder, ship any variety for the following purpose, and in the following quantity, and types of shipment: (a) To any person one gift package containing such variety, individually addressed to such person, not in excess of two standard packed cartons if such packages are shipped direct to the addressee for use by such person other than for resale; or (b) to any distributor individually addressed gift packages of such variety not in excess of two standard packed cartons each for distribution by such distributor to the respective addressee, but not for resale.

§ 905.141 Minimum exemption.

Any shipment of fruit which meets each of the following requirements may be transported from the production area during any one day by any person or by the occupants of one vehicle exempt from the requirements of §§ 905.52 and 905.53 and regulations issued thereunder:

(a) The shipment does not exceed a total of 15 standard packed cartons (12 bushels) of fruit, either a single fruit or a combination of two or more fruits;

(b) The shipment consists of fruit not for resale; and

(c) Such exempted quantity is not included as a part of a shipment ex-

ceeding 15 standard packed cartons (12 bushels) of fruit.

§ 905.142 Animal feed.

(a) The handling of citrus for animal feed shall be exempt from the provisions of §§ 905.52 and 905.53 and the regulations issued thereunder under the following conditions:

(1) The handler notifies the committee each fiscal period, prior to such handling of his/her intention to handle such fruit, the quantity he/she anticipates handling and the destination point of each lot of fruit and receives from the committee a special shipping permit for the shipment;

(2) The fruit is used for animal feed and is not offered for resale, disposed of, or in any way handled so as to enter fresh fruit channels;

(3) The quantity does not exceed 1,000 ⅘ bushel cartons per fiscal period or such other quantity as may be specified by the committee;

(4) The fruit is placed in containers of uniform capacity; and

(5) Each shipment is certified by the Federal-State Inspection Service as to the quantity shipped.

[46 FR 47056, Sept. 24, 1981]

§ 905.145 Certification of certain shipments.

Whenever a regulation pursuant to § 905.52 restricts the shipment of a portion of a specified grade or size of a variety, each handler shipping such variety during the regulation period shall, with respect to each such shipment, certify to the U.S. Department of Agriculture and the committee the quantity of the partially restricted grade or size, or both, contained in such shipment. Such certification shall accompany the manifest of such shipment which the handler furnishes to the Federal-State Inspection Service.

§ 905.146 Special purpose shipments.

A Special Purpose Shipper is one who certifies that he will deal only with citrus fruit which he knows of his own personal knowledge is produced on trees on which only compost, nonacidulated fertilizer such as rock phosphate, dolomite or ground limestone is used, and to which no chemical insecticide or fungicide has been applied. The shipper also shall certify that he will limit shipments to only registered and approved outlets handling such citrus fruits. Any such shipments shall be made subject to a Certificate of Privilege.

To qualify for a Certificate of Privilege, each such shipper must notify the committee prior to the first shipment of such fruit in the fiscal period of his intent to ship such citrus, submit an application on forms supplied by the committee, and agree to other requirements as set forth in §§ 905.147 and 905.148, inclusive, with respect to such shipments. The shipper shall certify that he will make no claims, written or verbal, concerning any alleged advantages of using, or any alleged superiority of, fruit shipped under a Certificate of Privilege, compared to other Florida produced citrus.

Citrus meeting all other applicable requirements may be handled without regard to grade regulations issued under § 905.52 under the following conditions:

(a) Such fruit meets requirements of the U.S. No. 2 Russet grade and those requirements of the U.S. No. 1 grade relating to shape (form) as such requirements are set forth in the revised U.S. Standards for grades of Florida Oranges and Tangelos (7 CFR 2851.1140–2851.1180), the revised U.S. Standards for Florida Tangerines (7 CFR 2851.1810–2851.1835), or the revised U.S. Standards for Grades of Florida Grapefruit (7 CFR 2851.750–2851.784). Such fruit meets applicable minimum size requirements in effect for domestic shipments of citrus fruits.

(b) All such citrus shall be inspected as required by § 905.53 by the Federal or Federal-State Inspection Service prior to the time such citrus is shipped from the packing facility, and certified as meeting the applicable requirements.

(c) Be reported as required in § 905.148.

[43 FR 9455, Mar. 8, 1978, as amended at 43 FR 54218, Nov. 21, 1978]

§ 905.147 Certificate of privilege.

(a) *Application.* Application for a Certificate of Privilege by a Special Purpose Shipper shall be made on forms furnished by the committee. Each application may contain, but need not be limited to, the name and address of the handler; a list of citrus suppliers, including addresses and grove locations; a list of receivers (who handle only so-called "natural" foodstuffs); the quantity and variety of citrus to be shipped; a certification to the Secretary of Agriculture and to the committee as to the truthfulness of the information shown thereon; and any other appropriate information or documents deemed necessary by the committee or its duly authorized agents for the purposes stated in § 905.146.

(b) *Approval.* The committee or its duly authorized agents shall give prompt consideration to each application for a Certificate of Privilege. Approval of an application based upon a determination as to whether the information contained therein and other information available to the committee supports approval, shall be evidenced by the issuance of a Certificate of Privilege to the applicant. Each certificate shall expire at the end of the fiscal period.

(c) *Disqualification.* The committee, from time to time, may conduct surveys of handling Special Purpose Shipments under Certificates of Privilege to determine whether handlers are complying with the requirements and regulations applicable to such certificates. Whenever the committee finds that a handler or consignee is failing to comply with these requirements, the Certificate of Privilege issued such handler may be rescinded and further certificates denied. Such disqualification shall apply to, and not exceed, a reasonable period of time as determined by the committee, but in no event shall it extend beyond the end of the current fiscal period. Any handler who has a certificate rescinded or denied may appeal to the committee in writing for reconsideration of his disqualification.

[43 FR 9456, Mar. 8, 1978]

§ 905.148 Reports of special purpose shipments under certificates of privilege.

(a) Each handler of citrus shipping under Certificates of Privilege shall supply the committee with reports on each shipment as requested by the committee, on forms supplied by the committee, showing the names and addresses of the shipper; name and address of the grower or growers supplying fruit for such shipment; truck or other conveyance identification; the loading point; destination; consignee; the inspection certificate number; and any other information deemed necessary by the committee.

(b) One copy of the report on each such shipment shall be forwarded to the committee promptly; two copies of the report shall be forwarded to the registered receiver. Upon the receipt of each shipment, the receiver shall complete the applicable portion of the form and return one copy to the committee within ten days. Such completion shall contain a certification to the Secretary and the committee that the citrus described shall be distributed in the outlets described. Failure to complete and return such forms will be cause to remove that receiver's name from the committee's list of eligible receivers.

[43 FR 9456, Mar. 8, 1978]

§ 905.150 Eligibility requirements for public member and alternate member.

(a) The public member shall be neither a producer nor a handler of Florida citrus fruit and shall have no direct financial interest in the production or marketing of citrus fruit (except as a consumer of agricultural products).

(b) The public member should be able to devote sufficient time and express a willingness to attend Committee activities regularly and become familiar with the background and economics of the industry.

(c) The public member must be a resident of the production area.

(d) The public member should be nominated by the Citrus Administrative Committee and should serve a 1-year term which coincides with the term of office of producer and handler members of the Committee.

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[43 FR 32397, July 27, 1978]

§ 905.152 Procedure for determining handlers' permitted quantities of Robinson, Dancy and similar tangerine varieties when a portion of the 210 size of such varieties is restricted.

(a) For the purposes of this section the prior period specified in § 905.52 is hereby established as a average week within the immediately preceding three seasons, together with the current season. When used in the regulation of Dancy tangerines the term "season" means the twenty weeks beginning with the first full week in October, and the term "current season" means the elapsed weeks beginning with the first full week in October of the current fiscal period through the most recent week that certified shipping records are available for all shippers. When used in the regulation of Robinson variety tangerines, the term "season" means the fifteen weeks beginning with the first full week in September, and the term "current season" means the elapsed weeks beginning with the first full week in September of the current fiscal period through the most recent week that certified shipping records are available for all shippers.

(b) When a size limitation restricts the shipment of a portion of the 210 size Dancy or Robinson tangerines during a particular week as provided in § 905.52, the committee shall compute the quantity of the 210 size of such variety that may be shipped by each handler by multiplying the handler's volume of shipments of such variety in the applicable prior period by the percentage established by regulation for such variety for that week.

(c) The committee shall notify each handler of the quantity of 210 size Dancy or Robinson tangerines such handler may handle during the particular week.

(d) Any handler may transfer any or all of his or her shipping allowance of 210 size Dancy or Robinson tangerines to another handler. Each handler party to such transfer shall promptly notify the committee so the proper adjustment of records may be made. The committee shall confirm all such transfers immediately after completion thereof by memorandum to the handlers involved.

[46 FR 47057, Sept. 24, 1981]

NOTE: After January 1, 1979, "Budget of Expenses and Rate of Assessment" regulations (e.g. sections .200 through .299) and "Handling" regulations (e.g. sections .300 through .399) which are in effect for a year or less, will not be carried in the Code of Federal Regulations. For FEDERAL REGISTER citations affecting these regulations, see the "List of CFR Sections Affected" in this volume.

Subpart—Interpretative Rule

§ 905.400 Interpretation of certain provisions.

(a) In interpreting the provisions of § 905.52(d), the limitation on shipment of any variety regulated pursuant to paragraph (a)(3) of this section, which was prepared for market during the effective period of such regulation, shall not be deemed to apply to shipment of such variety which was prepared for market incidentally as part of a lot packed for export, other than to Canada or Mexico, and shipped following the period of regulation.

(b) Prior to shipment of any variety so prepared the handler shall provide the Citrus Administrative Committee, or its designated agent, a copy of the shipping manifest applicable to such shipment with a notation thereon that the fruit was packed incidentally as part of a lot packed for export, other than to Canada or Mexico.

[45 FR 74464, Nov. 10, 1980]

PART 906—ORANGES AND GRAPEFRUIT GROWN IN LOWER RIO GRANDE VALLEY IN TEXAS

Subpart—Order Regulating Handling

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AUTHORITY: Secs. 1-19, 48 Stat. 31, as amended; 7 U.S.C. 601-674.

Subpart—Order Regulating Handling

SOURCE: 25 FR 9093, Sept. 22, 1960. Redesignated at 26 FR 12751, Dec. 30, 1961.

DEFINITIONS

§ 906.1 Secretary.

"Secretary" means the Secretary of Agriculture of the United States, or any employee of the Department to whom authority has heretofore been delegated, or to whom authority may hereafter be delegated, to act in his stead.

§ 906.2 Act.

"Act" means Public Act No. 10, 73d Congress, as amended and as re-enacted and amended by the Agricultural Marketing Agreement Act of 1937, as amended (secs. 1-19, 48 Stat. 31, as amended; 7 U.S.C. 601-674).

§ 906.3 Person.

"Person" means an individual, partnership, corporation, association, or any other business unit.

§ 906.4 Production area.

"Production area" means all territory in the counties of Cameron, Hidalgo, and Willacy in the State of Texas.

§ 906.5 Fruit.

"Fruit" means either or both of the following citrus fruits grown in the

production area: (a) Citrus grandis, Osbeck, commonly called grapefruit, and (b) Citrus sinensis, Osbeck, commonly called oranges.

§ 906.6 Handler.

"Handler" is synonymous with "shipper" and means any person (except a common or contract carrier of fruit owned by another person) who handles fruit or causes fruit to be handled.

(a) *Independent handler.* "Independent handler" means any handler other than a handler that is a cooperative marketing organization.

§ 906.7 Handle.

"Handle" or "ship" means to transport or sell fruit, or in any other way to place fruit, in the current of commerce between the production area and any point outside thereof in the United States, Canada, or Mexico.

§ 906.8 Producer.

"Producer" means any person engaged in a proprietary capacity in the production of fruit for market.

(a) *Independent producer.* "Independent producer" means any producer who does not market his fruit through a handler that is a cooperative marketing organization.

§ 906.9 Grade and size.

"Grade" means any one of the established grades of fruit and "size" means any one of the established sizes of fruit as defined and set forth in the applicable U.S. Standards for fruit (§§ 51.680–51.714 and §§ 51.620–51.653) issued by the United States Department of Agriculture, or amendments thereto, or modifications thereof, or variations based thereon recommended by the committee and approved by the Secretary.

§ 906.10 Pack.

"Pack" means the specific grade, quality, size, or arrangement of fruit in a particular container or containers.

§ 906.11 Maturity.

"Maturity" means various degrees of ripeness for fruit as established by the committee with approval of the Secretary.

§ 906.12 Container.

"Container" means any box, bag, crate, hamper, basket, package, bulk carton, or any other type of receptacle used in the packaging, transportation, sale, or other handling of fruit.

§ 906.13 Variety or varieties.

"Variety or varieties" means any one or more of the following groupings or classifications of fruit: (a) Navel oranges; (b) Early and Midseason oranges, except Navel oranges; (c) Valencia and similar late type oranges; (d) white seeded grapefruit; (e) white seedless grapefruit; (f) pink and red seeded grapefruit; and (g) pink and red seedless grapefruit.

§ 906.14 Committee.

"Committee" means the Texas Valley Citrus Committee, established pursuant to § 906.18.

§ 906.15 Fiscal period.

"Fiscal period" means the period beginning August 1 and ending July 31 following; or such annual beginning and ending dates as may be approved by the Secretary pursuant to recommendations of the committee.

§ 906.16 District.

"District" means any of the geographic divisions of the production area initially established pursuant to § 906.20 or as re-established pursuant to § 906.21.

COMMITTEE

§ 906.18 Establishment and membership.

(a) The Texas Valley Citrus Committee, consisting of fifteen (15) members is hereby established. For each member of the committee there shall be an alternate who shall have the same qualifications as the member.

(b) Nine members shall be producers who produce fruit in the district which they represent and are residents of the production area. Two of the producer members shall be producers who market their fruit through cooperative marketing organizations, and seven of the producer members shall be independent producers. Producer members shall not have a proprietary interest in

or be employees of a handler organization: *Provided,* That members of a cooperative marketing organization shall not be considered as having a proprietary interest in a handler organization because of such membership.

(c) Six members shall be handlers who are residents of the production area. One handler member shall represent cooperative marketing organizations; five handler members shall represent independent handlers.

§ 906.19 Term of office.

(a) The term of office of committee members and their respective alternates shall be for three years beginning August 1 and ending July 31: *Provided,* That the term of office of one-third of the initial producer members and alternates and one-third of the initial handler members and alternates shall end July 31, 1961, and the term of office of an identical number of such committee members and alternates shall end July 31, 1962. No member or alternate member shall succeed himself.

(b) Members and alternates shall serve in that capacity during the portion of the term of office for which they are selected and have qualified, and until their respective successors are selected and have qualified. Should a producer member or alternate member change his marketing affiliation during his term of office, he may continue to serve in such capacity during the remainder of such term.

[25 FR 9093, Sept. 22, 1960. Redesignated at 26 FR 12751, Dec. 30, 1961, and amended at 31 FR 10462, Aug. 4, 1966]

§ 906.20 Districts.

For the purpose of determining the basis for selecting producer committee members the following districts of the production area are hereby initially established:

District No. 1—The county of Cameron in the State of Texas;
District No. 2—The county of Hidalgo in the State of Texas; and
District No. 3—The county of Willacy in the State of Texas.

§ 906.21 Redistricting.

The committee may recommend, and pursuant thereto the Secretary may approve, the reapportionment of members among districts, the reapportionment of members between grower and handler members representing cooperative marketing organizations and independent grower and independent handler members, and the re-establishment of districts within the production area. In recommending such changes, the committee shall give consideration to: (a) Shifts in production; (b) the importance of new production in its relation to existing districts; (c) the equitable relationship of committee membership and districts; (d) changes in amount of fruit handled by cooperative marketing organizations in relation to fruit handled by independent handlers; and (e) other relevant factors. No changes in districting or in apportionment of members may become effective in less than 30 days prior to the date on which terms of office begin each year and no recommendations for such redistricting or reapportionment may be made less than six months prior to such date.

§ 906.22 Selection.

(a) From District No. 1 the Secretary shall select initially two producer members and their alternates representing independent producers. From District No. 2 the Secretary shall select initially two producer members and their respective alternates representing producers who market their fruit through cooperative marketing organizations, and four producer members and their respective alternates representing independent producers. From District No. 3 the Secretary shall select initially one producer member and his alternate representing independent producers.

(b) From the production area the Secretary shall select initially six handler members and their respective alternates. One handler member shall represent cooperative marketing organizations and five handler members shall represent independent handlers.

§ 906.23 Nominations.

The Secretary may select the members of the committee and alternates from nominations which may be made in the following manner:

(a) A meeting of producers who are members of cooperative marketing organizations and a meeting of independent producers shall be held for each district having both cooperative and independent producer members and alternates to elect nominees for such positions. For all other districts, meetings of all producers shall be held for such purpose. A meeting of handlers representing cooperative marketing organizations and a meeting of independent handlers shall be held in the production area to elect nominees for handler members and alternates. For nominations to the initial committee, the meetings may be sponsored by the United States Department of Agriculture or by any agency or group requested to do so by such Department. For nominations for succeeding members and alternates on the committee, the committee shall hold such meetings or cause them to be held prior to June 15 of each year, after the effective date of this subpart.

(b) At each such meeting at least one nomination shall be designated for each position as member and alternate.

(c) Nominations for committee members and alternates following the initial committee shall be supplied to the Secretary not later than July 1 each year.

(d) In districts having both cooperative and independent producer members, only producers who market their fruit through cooperative marketing organizations may participate in designating nominees for members and alternates representing cooperative producers; and only independent producers may participate in designating nominees for members and alternates representing independent producers. In all other districts, all producers may participate in designating the nominees for producer members and alternates. Only handlers representing cooperative marketing organizations may participate in designating nominees for members and alternates representing cooperative handlers; and only independent handlers may participate in designating nominees for members and alternates representing independent handlers. In the event that a person is engaged in producing fruit in more than one district such person shall elect the district within which he may participate, as aforesaid, in designating nominees.

(e) Regardless of the amount of fruit handled by a handler or the number of districts in which a person produces fruit, each person is entitled to cast only one vote on behalf of himself, his agents, subsidiaries, affiliates, and representatives in designating nominees for committee members and alternates. An eligible voter's privilege of casting only one vote shall be construed to permit a voter to cast one vote for each position to be filled. Votes must be cast in person at all nomination meetings.

§ 906.24 Failure to nominate.

If nominations are not made within the time and in the manner specified in § 906.23, the Secretary may, without regard to nominations, select the committee members and alternates, which selection shall be on the basis of the representation provided for in §§ 906.20 through 906.22, inclusive.

§ 906.25 Acceptance.

Any person selected as a committee member or alternate shall qualify by filing a written acceptance with the Secretary within ten days after being notified of such selection.

§ 906.26 Vacancies.

To fill committee vacancies, the Secretary may select such members or alternates from unselected nominees on the current nominee list from the district and group involved, or from nominations made in the manner specified in § 906.23. If the names of nominees to fill any such vacancy are not made available to the Secretary within 30 days after such vacancy occurs, such vacancy may be filled without regard to nominations, which selection shall be made on the basis of representation provided for in §§ 906.20 through 906.22, inclusive.

§ 906.27 Alternate members.

An alternate member of the committee shall act in the place and stead of the member for whom he is an alternate, during such member's absence or

when designated to do so by the member for whom he is an alternate. In the event both a member and his alternate are unable to attend a committee meeting, the committee members present may designate another alternate of the same classification (handler or producer, and to the extent practical, independent, or co-op) to serve in such member's place and stead. In the event of the death, removal, resignation, or disqualification of a member, his alternate shall act for him until a successor of such member is selected and has qualified.

[31 FR 10462, Aug. 4, 1966]

§ 906.28 Procedure.

Ten members of the committee shall be necessary to constitute a quorum, six of whom shall be producer members. Ten affirmative votes shall be required to pass any motion or approve any committee action. All votes shall be cast in person.

§ 906.29 Expenses and compensation.

The members of the committee, and alternates, shall serve without compensation; but they may be reimbursed for expenses necessarily incurred by them in the performance of their duties and in the exercise of their powers under this subpart.

§ 906.30 Powers.

The committee shall have the following powers:

(a) To administer the provisions of this part in accordance with its terms;

(b) To make rules and regulations to effectuate the terms and provisions of this part;

(c) To receive, investigate, and report to the Secretary complaints of violation of the provisions of this part; and

(d) To recommend to the Secretary amendments to this part.

§ 906.31 Duties.

It shall be, among other things, the duty of the committee:

(a) At the beginning of each term of office, to meet and organize, to select a chairman and such other officers as may be necessary, to select sub-committees, and to adopt such rules and regulations for the conduct of its business as it may deem advisable;

(b) To act as intermediary between the Secretary and any producer or handler;

(c) To furnish to the Secretary such available information as he may request;

(d) To appoint such employees, agents, and representatives as it may deem necessary and to determine the salaries and define the duties of each such person;

(e) To require adequate fidelity bonds for all persons handling funds;

(f) To investigate from time to time and to assemble data on the growing, harvesting, shipping, and marketing conditions with respect to fruit;

(g) To prepare a marketing policy;

(h) To recommend marketing regulations to the Secretary;

(i) To recommend rules and procedures for, and to make determinations in connection with, issuance of certificates of privilege;

(j) To keep minutes, books, and records which clearly reflect all of the acts and transactions of the committee; and such minutes, books, and records shall be subject to examination at any time by the Secretary or his authorized agent or representative; and minutes of each committee meeting shall be promptly submitted to the Secretary;

(k) At the beginning of each fiscal period, to prepare a budget of its expenses for such fiscal period, together with a report thereon;

(l) To cause the books of the committee to be audited by a competent accountant at least once each fiscal period, and at such other time as the committee may deem necessary or as the Secretary may request (the report of each such audit shall show the receipt and expenditure of funds collected pursuant to this part; a copy of each such report shall be furnished to the Secretary and a copy of each report shall be made available at the principal office of the committee for inspection by producers and handlers); and

(m) To consult, cooperate, and exchange information with other marketing agreement committees and other individuals or agencies in con-

nection with all proper committee activities and objectives under this part.

Expenses and Assessments

§ 906.32 Expenses.

The committee is authorized to incur such expenses as the Secretary may find are reasonable and likely to be incurred during each fiscal period for its maintenance and functioning, and for such purposes as the Secretary, pursuant to this subpart, determines to be appropriate. Each handler's share of such expense shall be proportionate to the ratio between the total quantity of fruit handled by him as the first handler thereof during a fiscal period and the total quantity of fruit handled by all handlers as first handlers thereof during such fiscal period.

§ 906.33 Budget.

At the beginning of each fiscal period and as may be necessary thereafter, the committee shall prepare an estimated budget of income and expenditures necessary for the administration of this part. The committee shall recommend the rate of assessment calculated to provide adequate funds to defray its proposed expenditures. The committee shall present such budget to the Secretary with an accompanying report showing the basis for its estimates and recommendations.

§ 906.34 Assessments.

(a) The funds to cover the committee's expenses shall be acquired by the levying of assessments upon handlers as provided in this subpart. Each handler who first handles fruit shall, with respect to the fruit so handled by him, pay assessments to the committee upon demand, which assessments shall be in payment of such handler's pro rata share of the committee's expenses.

(b) Assessments shall be levied upon handlers at rates established by the Secretary. Such rates may be established upon the basis of the committee's recommendations and other available information. Such rates may be applied to specified containers used in the production area.

(c) The rate of assessment may be increased at any time by the Secretary if he finds such increase is necessary in order that the money collected shall be adequate to cover the committee's expenses during a given fiscal period. Such increase shall be applicable to all fruit handled during such fiscal period.

(d) The payment of assessments for the maintenance and functining of the committee may be required under this part throughout the period it is in effect irrespective of whether particular provisions of this part are suspended or become inoperative.

§ 906.35 Accounting.

(a) If, at the end of a fiscal period, the assessments collected are in excess of expenses incurred, such excess shall be accounted for in accordance with one of the following:

(1) If such excess is not retained in a reserve, as provided in paragraph (a)(2) of this section, it shall be refunded proportionately to the persons from whom collected.

(2) The committee, with the approval of the Secretary may carry over such excess into subsequent fiscal periods as a reserve: *Provided,* That funds already in the reserve do not equal approximately 1 fiscal period's expenses. Such reserve funds may be used for any expenses authorized pursuant to § 906.32 and for necessary expenses of liquidation in the event of termination of this part. Upon such termination, any funds not required to defray the necessary expenses of liquidation shall be disposed of in such manner as the Secretary may determine to be appropriate. To the extent practical, such funds shall be returned pro rata to the persons from whom such funds were collected.

(b) All funds received by the committee pursuant to the provisions of this part shall be used solely for the purpose specified in this part and shall be accounted for in the manner provided in this part. The Secretary may at any time require the committee and its members to account for all receipts and disbursements.

(c) Upon the removal or expiration of the terms of office of any member

of the committee, such member shall account for all receipts and disbursements and deliver all property and funds in his possession to the committee, and shall execute such assignments and other instruments as may be necessary or appropriate to vest in the committee full title to all of the property, funds, and claims vested in such member pursuant to this part.

(d) The committee may make recommendations to the Secretary for one or more of the members thereof, or any other person, to act as a trustee for holding records, funds, or any other committee property during periods of suspension of this subpart, or during any period or periods when regulations are not in effect, and if the Secretary determines such action appropriate, he may direct that such person or persons shall act as trustee or trustees for the committee.

[25 FR 9093, Sept. 22, 1960. Redesignated at 26 FR 12751, Dec. 30, 1961, and amended at 31 FR 10462, Aug. 4, 1966]

Research and Development

§ 906.37 Research and development.

The committee, with the approval of the Secretary, may establish or provide for the establishment of marketing research and development projects, including paid advertising, designed to assist, improve, or promote the marketing, distribution, and consumption of fruit. Any such project for the promotion and advertising of fruit may utilize an identifying mark which shall be made available for use by all handlers in accordance with such terms and conditions as the committee, with the approval of the Secretary, may prescribe. The expenses of such projects shall be paid from funds collected pursuant to § 906.34.

[31 FR 10462, Aug. 4, 1966]

Regulation

§ 906.38 Marketing policy.

Prior to or at the same time as initial recommendations are made pursuant to § 906.39, the committee shall submit to the Secretary a report setting forth the marketing policy it deems desirable for the industry to follow in shipping fruit from the production area during the ensuing season. Additional reports shall be submitted from time to time if it is deemed advisable by the committee to adopt a new or modified marketing policy because of changes in the demand and supply situation with respect to fruit. The committee shall publicly announce the submission of each marketing policy report and copies thereof shall be available at the committee's office for inspection by any producer or handler. In determining each such marketing policy the committee shall give due consideration to the following:

(a) Market prices of fruit, including prices by grade, size, and quality in different packs, and such prices by foreign competing areas;

(b) Supply of fruit, by grade, size, and quality in the production area, and in other production areas, including foreign production areas;

(c) Trend and level of consumer income;

(d) Marketing conditions affecting fruit prices; and

(e) Other relevant factors.

§ 906.39 Recommendations for regulations.

The committee, upon complying with the requirements of § 906.38, may recommend regulations to the Secretary whenever it finds that such regulations, as are provided for in this subpart, will tend to effectuate the declared policy of the act. The committee shall give notice to handlers of any such recommendation at the same time such recommendation is submitted to the Secretary.

§ 906.40 Issuance of regulations.

The Secretary shall limit the handling of fruit whenever he finds from the recommendation and information submitted by the committee, or from other available information, that such rgulation would tend to effectuate the declared policy of the act. Such regulations may:

(a) Limit the handling of particular grades, sizes, qualities, maturities, or packs of any or all varieties of fruit during a specified period or periods: *Provided*, That specific maturity re-

quirements applicable to the handling of any variety may be prescribed under this section only in the event that appropriate maturity requirements for such variety are not in effect under State authority.

(b) Limit the handling of particular grades, sizes, qualities, or packs of fruit differently for different varieties, for different containers, for different purposes specified in § 906.42, or any combination of the foregoing, during any period.

(c) Limit the handling of fruit by establishing, in terms of grades, sizes, or both, minimum standards of quality and maturity.

(d) Fix the size, weight, capacity, dimensions, or pack of the container or containers which may be used in the packaging, transportation, sale, shipment, or other handling of fruit.

(e) Prohibit the handling (1) of any fruit which does not have marked on each container the grade or the registered grade label of the fruit contained therein; (2) of any grapefruit which does not have marked on each fruit the word "Texas" or other words implying Texas origin, except that the committee may recommend and the Secretary establish a tolerance for grapefruit in any container or lot not so marked; and (3) of any container fruit which is misbranded as to variety.

(f) No regulations may be issued under the provisions of this subpart which allots to individual handlers the quantity of fruit which each handler may ship during any regulation period.

§ 906.41 Gift fruit shipments.

The handling to any person of gift packages of fruit individually addressed to such person, in quantities aggregating not more than 500 pounds and not for resale, are exempt from the provisions of §§ 906.34, 906.40, and 906.45, and the regulations issued thereunder, but shall conform to such safeguards as may be established pursuant to § 906.43.

§ 906.42 Shipments for special purposes.

Upon the basis of recommendations and information submitted by the committee, or other available information, the Secretary, whenever he finds that it will tend to effectuate the declared policy of the act, shall modify, suspend, or terminate regulations issued pursuant to §§ 906.34, 906.40, 906.45, or any combination thereof, in order to facilitate the handling of fruit:

(a) For relief or for charity;

(b) For processing or for manufacture or conversion into specified products; and

(c) In such minimum quantities and for such other purposes as may be specified by the committee with the approval of the Secretary.

§ 906.43 Notification of regulations.

The Secretary shall notify the committee of any regulations issued or of any modification, suspension, or termination thereof. The committee shall give reasonable notice thereof to handlers.

§ 906.44 Safeguards.

(a) The committee, with the approval of the Secretary, may prescribe adequate safeguards to prevent the handling of fruit pursuant to § 906.41 or § 906.42 from entering channels of trade for other than the specific purpose authorized therefor, and rules governing the issuance and the contents of certificates of privilege if such certificates are prescribed as safeguards by the committee. Such safeguards may include requirements that:

(1) Handlers shall file applications with the committee to ship fruit pursuant to §§ 906.41 and 906.42.

(2) Handlers shall obtain inspection provided by § 906.45, or pay the assessment levied pursuant to § 906.34, or both, in connection with shipments made under § 906.42: *Provided*, That such inspection and assessment requirements shall not apply to fruit handled for canning or freezing.

(3) Handlers shall obtain certificates of privilege from the committee to handle fruit affected or to be affected under the provisions of §§ 906.41 and 906.42.

(b) The committee may rescind or deny certificates of privilege to any handler if proof is obtained that fruit handled by him for the purposes

stated in §§ 906.41 and 906.42 was handled contrary to the provisions of this part.

(c) The Secretary shall have the right to modify, change, alter, or rescind any safeguards prescribed and any certificates issued by the committee pursuant to the provisions of this section.

(d) The committee shall make reports to the Secretary, as requested, showing the number of applications for such certificates, the quantity of fruit covered by such applications, the number of such applications denied and certificates granted, the quantity of fruit handled under duly issued certificates, and such other information as may be requested.

INSPECTION

§ 906.45 Inspection and certification.

(a) During any period in which handling of a variety of a type of fruit is regulated pursuant to §§ 906.34, 906.40, 906.42, or any combination thereof, no handler shall handle any variety of such type of fruit which has not been inspected by an authorized representative of the Federal or Federal-State Inspection Service, unless such handling is relieved from such requirements pursuant to § 906.41 or § 906.42, or both;

(b) Regrading, resorting, or repacking any lot of fruit shall invalidate any prior inspection insofar as the requirements of this section are concerned. No handler shall handle fruit after it has been regraded, resorted, repacked, or in any other way prepared for market, unless each lot of fruit is inspected by an authorized representative of the Federal or Federal-State Inspection Service: *Provided*, That the committee, with the approval of the Secretary, may provide for waiving inspection requirements on any fruit in circumstances where it appears reasonably certain that, after regrading, resorting, or repacking, such fruit meets the applicable quality and other standards then in effect;

(c) Insofar as the requirements of this section are concerned, the length of time for which an inspection certificate is valid may be established by the committee with the approval of the Secretary;

(d) When fruit is inspected in accordance with the requirements of this section a copy of each inspection certificate issued shall be made available to the committee by the inspection service;

(e) The committee may recommend and the Secretary may require that any fruit handled or transported by motor vehicle shall be accompanied by a copy of the inspection certificate issued thereon, which certificate shall be surrendered to such authority as may be designated.

REPORTS

§ 906.51 Reports.

Upon request of the committee, made with the approval of the Secretary, each handler shall furnish to the committee, in such manner and at such time as it may prescribe, such reports and other information as may be necessary for the committee to perform its duties under this part.

(a) Such reports may include, but are not necessarily limited to, the following:

(1) The quantities of fruit received by a handler;

(2) The quantities disposed of by him, segregated as to the respective quantities subject to regulation and not subject to regulation;

(3) The date of each such disposition and the identification of the carrier transporting such fruit;

(4) Identification of the inspection certificates, and the certificates of privilege, if any, pursuant to which the fruit was handled, together with the destination of each lot of fruit handled pursuant to § 906.41.

(b) All such reports shall be held under appropriate protective classification and custody of the committee, or duly appointed employees thereof, so that the information contained therein which may adversely affect the competitive position of any handler in relation to other handlers will not be disclosed. Compilations of general reports from data submitted by handlers is authorized, subject to prohibition of disclosure of individual handlers identities or operations.

(c) Each handler shall maintain for at least two succeeding years such records of the fruit received and disposed of by such handler as may be necessary to verify the reports he submits to the committee pursuant to this section.

MISCELLANEOUS PROVISIONS

§ 906.52 Compliance.

Except as provided in this subpart, no handler shall handle fruit, the handling of which has been prohibited by the Secretary in accordance with provisions of this subpart, or the rules and regulations issued thereunder, and no handler shall handle fruit except in conformity to the provisions of this part.

§ 906.53 Right of the Secretary.

The members of the committee (including successors and alternates), and any agent or employee appointed or employed by the committee, shall be subject to removal or suspension by the Secretary at any time. Each and every order, regulation, decision, determination or other act of the committee shall be subject to the continuing right of the Secretary to disapprove of the same at any time. Upon such disapproval, the disapproved action of the said committee shall be deemed null and void, except as to acts done in reliance thereon or in compliance therewith prior to such disapproval by the Secretary.

§ 906.54 Effective time.

The provisions of this subpart, or any amendment thereto, shall become effective at such time as the Secretary may declare and shall continue in force until terminated in one of the ways specified in this subpart.

§ 906.55 Termination.

(a) The Secretary may, at any time, terminate the provisions of this subpart by giving at least one day's notice by means of a press release or in any other manner he may determine.

(b) The Secretary may terminate or suspend the operation of any or all of the provisions of this subpart whenever he finds that such provisions do not tend to effectuate the declared policy.

(c) The Secretary shall terminate the provisions of this subpart at the end of any fiscal period whenever he finds that such termination is favored by a majority of producers who, during a representative period, have been engaged in the production of fruit for market: *Provided*, That such majority has, during such representative period, produced for market more than fifty percent of the volume of such fruit produced for market.

(d) The provisions of this subpart shall, in any event, terminate whenever the provisions of the act authorizing them cease to be in effect.

§ 906.56 Proceedings after termination.

(a) Upon the termination of the provisions of this subpart the then functioning members of the committee shall, for the purpose of liquidating the affairs of the committee continue as joint trustees of all the funds and property then in the possession of or under control of the committee, including claims for any funds unpaid or property not delivered at the time of such termination. Action by said trusteeship shall require the concurrence of a majority of the said trustees.

(b) The said trustees shall continue in such capacity until discharged by the Secretary; shall, from time to time, account for all receipts and disbursements and deliver all property on hand, together with all books and records of the committee and of the trustees, to such person as the Secretary may direct; and shall, upon the request of the Secretary, execute such assignments or other instruments necessary or appropriate to vest in such person full title and right to all funds, property, and claims vested in the committee or the trustees pursuant to this subpart.

(c) Any person to whom funds, property, or claims have been transferred or delivered by the committee or its members pursuant to this section, shall be subject to the same obligations imposed upon the members of the committee and upon the said trustees.

§ 906.57 Effect of termination or amendment.

Unless otherwise expressly provided by the Secretary, the termination of this subpart or of any regulation issued pursuant to this subpart, or the issuance of any amendments to either thereof, shall not (a) affect or waive any right, duty, obligation, or liability which shall have arisen or which may thereafter arise in connection with any provision of this subpart or any regulation issued under this subpart, or (b) release or extinguish any violation of this subpart or of any regulations issued under this subpart, or (c) affect or impair any rights or remedies of the Secretary or of any other person with respect to any such violations.

§ 906.58 Duration of immunities.

The benefits, privileges, and immunities conferred upon any person by virtue of this subpart shall cease upon the termination of this subpart, except with respect to acts done under and during the existence of this subpart.

§ 906.59 Agents.

The Secretary may, by designation in writing, name any person, including any officer or employee of the United States, or name any agency in the United States Department of Agriculture, to act as his agent or representative in connection with any of the provisions of this subpart.

§ 906.60 Derogation.

Nothing contained in this subpart is, or shall be construed to be, in derogation or in modification of the rights of the Secretary or of the United States to exercise any powers granted by the act or otherwise, or in accordance with such powers, to act in the premises whenever such action is deemed advisable.

§ 906.61 Personal liability.

No member or alternate of the committee or any employee or agent thereof, shall be held personally responsible, either individually or jointly with others, in any way whatsoever, to any handler or to any person for errors in judgment, mistakes, or other acts, either of commission or omission, as such member, alternate, agent, or employee, except for act of dishonesty, willful misconduct, or gross negligence.

§ 906.62 Separability.

If any provision of ths subpart is declared invalid, or the applicability thereof to any person, circumstance, or thing is held invalid, the validity of the remainder of this subpart, or the applicability thereof to any other person, circumstance, or things, shall not be affected thereby.

Subpart—Rules and Regulations

§ 906.120 Fruit exempt from regulations.

(a) *Minimum quantity.* Any person or the occupants of any one vehicle may ship fruit from the production area during any one day exempt from the requirements of §§ 906.34, 906.40, and 906.45, and regulations issued thereunder: *Provided,* That the shipment does not exceed 400 pounds of fruit (either oranges or grapefruit or a combination of both), it consists solely of fruit not for resale, and it is not part of a shipment of fruit exceeding 400 pounds.

(b) *Processing.* The term "processing" as used in § 906.42(b) means the manufacture of any orange or grapefruit product which has been preserved by any recognized commercial process, including canning, freezing, dehydrating, drying, and the addition of chemical substances, or by fermentation. Fruit so processed if handled in accordance with § 906.123 shall be exempt from the provisions of §§ 906.34 and 906.40. Fruit for conversion into juice without pasteurization or preservative treatment, as herein described, shall be deemed fresh fruit and subject to all regulations under this part.

(c) *Special purpose shipments and safeguards.* (1) Fruit may be handled for relief, charity, or home use exempt from the requirements of §§ 906.34, 906.40, and 906.45 and the regulations issued thereunder: *Provided,* That the fruit shall not be offered for resale, and the handler submits, prior to any

such handling, an application to the committee on forms provided by the committee. The application shall contain the name and address of the handler and such other information that the committee may require including, but not limited to, the quantity of fruit involved, license number of the conveyance, and supporting documentation. Approval of the application by the committee shall be evidenced by the issuance of a certificate of privilege to the applicant in accordance with paragraph (d) of this section.

(2) Gift packages of fruit handled pursuant to § 906.41 shall be in containers stamped or marked with the handler's name and address.

(3) Fruit may be handled exempt from regulations issued pursuant to § 906.40(d), if the following conditions are met:

(i) Each fiscal period the handler submits prior to such handling a written application to the committee on forms provided by the committee. The application shall contain the name and address of the handler, and a description of the container or containers in which such fruit would be handled.

(ii) The fruit grades at least U.S. No. 1.

(iii) The fruit is handled in closed fully telescopic fiberboard cartons with inside dimensions of 16⅛ x 10¾ x 10½ inches which are packed level full, and the cover and bottom section have a Mullen or Cady test of at least 250 pounds; in six-packs; in 12-packs; in baskets of a capacity of 1 bushel or less; or in any of the containers authorized under § 906.340, provided they are stamped or marked "special purpose shipment".

(iv) Each handler shall file a report with the committee within 1 business day after each shipment handled pursuant to paragraph (c)(3). Such report shall contain the name and address of the handler; date fruit is handled; the number and type of containers and packs in such shipment; the inspection certificate numbers applicable to such shipment; name and address of the purchaser; and the license number of the truck, trailer, or automobile, as the case may be, in which the shipment was loaded.

(4) Oranges and grapefruit may be handled exempt from container and pack regulations issued pursuant to § 906.40(d), under the following conditions:

(i) Such oranges and/or grapefruit are mixed with other types of fruit;

(ii) Such oranges and/or grapefruit constitute at least 50 percent, by count, of the contents of any container, and any such container is not larger than a ⅗ bushel carton; and

(iii) Such grapefruit grade at least U.S. No. 1, and such oranges grade at least U.S. Combination (with not less than 60 percent, by count, of the oranges in any lot grading at least U.S. No. 1).

(d) The committee or its duly authorized agents, shall approve or deny each handler's request to handle fruit under paragraphs (c)(1) and (c)(3) of this section and promptly notify such handler in writing of its decision: *Provided*, That if it approves a handler's request, it shall issue a certificate of privilege as provided in § 906.44, but if it denies a request it shall advise the handler why the application was denied. The committee may rescind a certificate of privilege issued to a handler, or deny a certificate of privilege to a handler upon proof satisfactory to the committee that such handler has shipped fruit contrary to the provisions of this part. Such action denying a certificate of privilege shall apply to and not exceed a reasonable period of time as determined by the committee. Any handler who has had a certificate of privilege rescinded or denied may file a written appeal with the committee for reconsideration.

(e) *Terms.* The term "bushel" means a unit of measure equivalent to 2,150.42 cubic inches; the term "level full" means that the fruit is level with the top edge of the bottom section of the carton; the term "six-pack" means any container with a capacity of one-fourth of a bushel, the term "basket" means any container made of interwoven material; the term "closed" means closed in accordance with good commercial practices; and terms relating to grade mean the same as in the U.S. Standards for Grades of Grapefruit (Texas and States other than Florida, California, and Arizona) (7 CFR 51.620

through 51.653), or in the U.S. Standards for Grades of Oranges (Texas and States other than Florida, California, and Arizona) (7 CFR 51.680 through 51.714).

[25 FR 9757, Oct. 12, 1960. Redesignated at 26 FR 12751, Dec. 30, 1961, and amended at 39 FR 44736, Dec. 27, 1974; 40 FR 3286, Jan. 21, 1975; 44 FR 75103, Dec. 19, 1979; 48 FR 50502, Nov. 2, 1983; 49 FR 3173, Jan. 26, 1984]

§ 906.121 Reestablishment of districts.

The three districts of the production area specified in § 906.20 *Districts* are reestablished as a single district comprising the entire production area.

[34 FR 6651, Apr. 18, 1969]

§ 906.122 Changes in member and alternate member apportionment on the committee.

The representation or membership on the Texas Valley Citrus Committee is reapportioned to provide for the nomination and selection from the district, as reestablished in § 906.121 pursuant to § 906.21, of (a) four producer members and their respective alternates representing producers who market their fruit through cooperative marketing organizations; (b) five producer members and their respective alternates representing independent producers; (c) two handler members and their respective alternates representing cooperative marketing organizations; and (d) four handler members and their respective alternates representing independent handlers.

[34 FR 6651, Apr. 18, 1969]

§ 906.123 Fruit for processing.

(a) No person shall be granted exemption from regulation to handle oranges and grapefruit for processing unless such fruit is shipped to an approved processor. All such shipments to an approved processor shall be reported to the committee on a form approved by it.

(b) *Approved processor.* Any person who desires to acquire, as an approved processor, fruit for processing, as set forth in § 906.120(b), shall, prior thereto, file an application with the committee on a form approved by it, which shall contain, but not be limited to, the following information:

(1) Name and address of applicant;

(2) Location of plant or plants where manufacturing is to take place;

(3) Approximate quantity of fruit used each month;

(4) A statement that the fruit obtained will be used for processing only and will not be resold or disposed of in fresh fruit channels; and

(5) Agree to submit such reports as are required by the committee. Such application shall be investigated by the committee staff. After such investigation, the staff shall report its findings to the committee at its next meeting or to its delegated subcommittee. Based upon the staff's report and other reliable information, the committee or delegated subcommittee shall approve or disapprove the application and notify the applicant accordingly. If the application is approved, the applicant's name shall be placed upon the list of approved processors.

(c) *Certificate by processors.* Upon request by the committee each approved processor shall submit to the committee on or before the 10th day of each month a report of the oranges and grapefruit used during the preceding calendar month. Each report shall contain a certificate to the United States Department of Agriculture and to the committee as to the truthfulness of the information shown therein.

(d) *Diversion report.* Each handler who ships fruit to processors for processing shall report to the committee on a form approved by it the following information:

(1) Name and address of the processor's place of business where the fruit was shipped;

(2) The net weight of oranges or grapefruit;

(3) Truck license number or rail car initial and number;

(4) Inspection certificate number; and

(5) Such other information as the committee may require.

The handler shall prepare 4 copies of the report and sign them. The original copy shall be submitted to the committee within 7 days. One copy shall be retained by the handler. One copy

shall be given to the party transporting the fruit who, upon arrival at the processor's place of business, shall turn it over to the party receiving the fruit with the understanding that the processor will record thereon the actual net weight of the fruit received and forward such copy to the committee office. One copy shall be submitted to the processor along with the invoice.

[39 FR 44736, Dec. 27, 1974]

§ 906.137 Handlers use of identifying marks utilized by the committee in promotional and advertising projects.

(a) On and after November 1, 1969, the identifying marks "Texasweet" and "Sweeter by Nature" shall be available to handlers only under the following terms and conditions:

(1) The identifying marks "Texasweet" and "Sweeter by Nature" may severally or jointly be affixed only to containers of grapefruit or to individual grapefruit comprising a lot which grades at least U.S. No. 1.

(2) The identifying marks "Texasweet" and "Sweeter by Nature" may severally or jointly be affixed only to containers of oranges or to individual oranges comprising a lot which grades at least U.S. Combination, with not less than 60 percent, by count, of the oranges in each container thereof grading at least U.S. No. 1 and the remainder U.S. No. 2.

(b) When used herein, terms relating to grade shall have the same meaning as is given to the respective term in the U.S. Standards for Grapefruit (Texas and States other than Florida, California, and Arizona) (7 CFR 51.620 through 51.685) and in the U.S. Standards for Oranges (Texas and States other than Florida, California, and Arizona) (7 CFR 51.680 through 51.712).

[33 FR 14069, Sept. 17, 1968, as amended at 34 FR 17325, Oct. 25, 1969]

§ 906.151 Reports.

During each fiscal period, each handler shall upon request by the committee file with the committee within the time specified in the request an accurate report showing the total quantity or oranges and the total quantity of grapefruit received by him during such fiscal period or the preceding fiscal period, as requested.

[34 FR 6651, Apr. 18, 1969]

NOTE: After January 1, 1979, "Budget of Expenses and Rate of Assessment" regulations (e.g. sections .200 through .299) and "Handling" regulations (e.g. sections .366 through .399) which are in effect for a year or less, will not be carried in the Code of Federal Regulations. For FEDERAL REGISTER citations affecting these regulations, see the "List of Sections Affected" in this volume.

Subpart—Containers and Pack Requirements

§ 906.340 Container, pack, and container marking regulations.

(a) On and after January 1, 1983, no handler shall handle any variety of oranges or grapefruit grown in the production area unless such fruit is in one of the following containers, and the fruit is packed and the containers are marked as specified in this section.

(1) *Containers.* (i) Closed fiberboard carton with inside dimensions of 13¼ x 10⅛ x 7¼ inches: *Provided,* That the container has a Mullen or Cady test of at least 200 pounds;

(ii) Closed fully telescopic fiberboard carton with inside dimensions of 16⅛ x 10¾ x 9⅛ inches, described in Freight Container Tariff 2G as container No. 6506;

(iii) Closed fully telescopic fiberboard carton with inside dimensions of 19¾ x 13⅛ x 13 inches: *Provided,* That the cover section and bottom section each has a Mullen or Cady test of at least 250 pounds: *Provided further,* That such containers are from inventories on hand, and used prior to July 31, 1983;

(iv) Closed fiberboard carton with inside dimensions of 20 x 13¼ inches and of a depth from 9¾ to 10¾ inches: *Provided,* That the container has a Mullen or Cady test of at least 250 pounds and the container is used only for the shipment of eight 5-pound bags or five 8-pound bags of fruit;

(v) Bags having a capacity of 5 or 8 pounds of fruit: *Provided,* That fruit packed in such bags shall be handled only when packed in the number and container specified in paragraph (a)(1)(iv);

(vi) Bags of the mesh or woven type having a capacity of 18 pounds of fruit:

(vii) Wire crib with inside dimensions of 46½ x 37 x 30 inches: *Provided,* That such cribs be constructed of either 4 x 4 inch mesh wire at least 0 gauge, or 2 x 2 inch mesh wire at least 2 gauge: *Provided further,* That a new liner shall be placed in this container each time it is filled for shipment;

(viii) Such other types and sizes of containers as may be approved by the Texas Valley Citrus Committee for testing in connection with a research project conducted by or in cooperation with the said committee: *Provided,* That the handling of each lot of fruit in such test containers shall be subject to prior approval, and under the supervision, of the Texas Valley Citrus Committee; and

(2) *Pack regulation*—(i) *Oranges.* (*a*) Oranges, except Navel oranges and Valencia and similar late-type oranges; when packed in any box, bag, or carton shall, except as otherwise provided by regulations issued pursuant to this part, be within the diameter limits specified for the various pack sizes in section 51.691(c) of the United States Standards for Grades of Oranges (Texas and States other than Florida, California, and Arizona);

(*b*) Oranges, except Navel oranges and Valencia and similar late-type oranges, when packed in boxes or cartons shall be packed in accordance with the requirements of standard pack; and

(*c*) Navel oranges and Valencia and similar late-type oranges, when place packed in any box or carton shall be sized in accordance with the sizes set forth in the following Table I, except as otherwise provided by regulations issued pursuant to this part, and otherwise meet the requirements of standard pack; and when in containers not packed according to a definite pattern shall be sized in accordance with the sizes set forth in the following Table I and otherwise meet the requirements of standard sizing: *Provided,* That the packing tolerances, which are set forth in the U.S. Standards for Oranges (Texas and States other than Florida, California, and Arizona), shall be applicable to fruit so packed: *And provided further,* That the variation from the smallest to the largest fruit in any container is not more than the following applicable amount:

(*1*) 46, 54, 64, 70 or 72, or 80 sizes—not more than eight-sixteenths inch in diameter;

(*2*) 100, 112, or 125 sizes—not more than six-sixteenths inch in diameter;

(*3*) 163, or 200 sizes—not more than five-sixteenths inch in diameter; and

(*4*) 252, 288, or 324 sizes—not more than four-sixteenths inch in diameter.

TABLE I—1⅗ BUSHEL BOX

(DIAMETER IN INCHES)

Pack size	Minimum	Maximum
46	4 1/16	5
54	4	4 1/16
64	3 15/16	4 1/16
70 or 72	3 15/16	4 1/16
80	3 15/16	4 1/16
100	3 15/16	3 15/16
112	3 15/16	3 15/16
125	3 15/16	3 15/16
163	2 15/16	3 15/16
200	2 15/16	3 15/16
252	2 15/16	2 15/16
288	2 15/16	2 15/16
324	2 15/16	2 15/16

(ii) *Grapefruit.* Grapefruit, when packed in any box, bag or carton, shall be within the diameter limits specified for the various pack sizes § 51.630(c) of the United States Standards for Grades of Grapefruit (Texas and States other than Florida, California, and Arizona): *Provided,* That the minimum diameter limit for pack size 96 grapefruit shall be 3 15/16 inches and for pack size 112 grapefruit shall be 3 15/16 inches, and *Provided further,* That any grapefruit in boxes or cartons shall be packed in accordance with the requirements of standard pack.

(3) *Container grade markings.* Any container of U.S. No. 2 grade fruit shall be marked to indicate the grade of the fruit in letters and numbers at least three-fourths inch in height: *Provided,* That bags of capacity of 5 or 8 pounds of fruit shall be so marked with letters and numbers at least one-fourth inch in height prominently displayed on the front panel of the bag.

(b) *Nonapplicability.* The provisions of this section shall not apply to gift packages of fruit.

(c) As used herein, terms relating to grade, pack, standard pack, and diameter mean the same as defined in the United States Standards for Grades of Oranges (Texas and States other than Florida, California, and Arizona), (7 CFR 51.680 through 51.714), or in the United States Standards for Grades of Grapefruit (Texas and States other than Florida, California, and Arizona), (7 CFR 51.620 through 51.652); and "closed" means closed in accordance with good commercial practices.

[33 FR 11542, Aug. 14, 1968, as amended by Amdt. 3, 34 FR 14515, Sept. 18, 1969; 37 FR 4708, Mar. 4, 1972; 37 FR 25817, Dec. 5, 1972; 37 FR 28045, Dec. 20, 1972; 43 FR 51000, Nov. 2, 1978; 44 FR 55550, Sept. 27, 1979; 45 FR 62974, Sept. 23, 1980; 47 FR 56311, Dec. 16, 1982]

§ 906.365 Texas Orange and Grapefruit Regulation 34.

(a) On and after February 8, 1982, no handler shall handle any variety of orange or grapefruit grown in the production area unless:

(1) Such oranges grade U.S. Fancy, U.S. No. 1, U.S. No. 1 Bright, U.S. No. 1 Bronze, U.S. Combination (with not less than 60 percent, by count, of the oranges in any lot thereof grading at least U.S. No. 1), or U.S. No. 2;

(2) Such oranges are at least pack size 288, as such size if specified in section 2851.691(c) of the U.S. Standards for Grades of Oranges (Texas and States other than Florida, California, and Arizona), except that the minimum diameter limit for pack size 288 oranges in any lot shall be 2$^{9}/_{16}$ inches;

(3) Such grapefruit grade U.S. Fancy, U.S. No. 1, U.S. No. 1 Bright, U.S. No. 1 Bronze, or U.S. No. 2;

(4) Such grapefruit are at least pack size 96, as such size is specified in section 2851.630(c) of the U.S. Standards for Grades of Grapefruit (Texas and States other than Florida, California, and Arizona), except that the minimum diameter limit for pack size 96 grapefruit in any lot shall be 3$^{9}/_{16}$ inches: *Provided,* That any handler may handle grapefruit smaller than pack size 96, provided such grapefruit grade are at least U.S. No. 1 and they are at least pack size 112, as such size is specified in the aforesaid U.S. Standards for Grapefruit, except that the minimum diameter limit for pack size 112 grapefruit in any lot shall be 3$^{9}/_{16}$ inches;

(5) An appropriate inspection certificate has been issued for such fruit within 48 hours prior to the time of shipment; and

(6) The fruit meets all the applicable container and pack requirements effective under this marketing order.

(b) Terms relating to grade and diameter shall mean the same as in the U.S. Standards for Grades of Oranges (Texas and States other than Florida, California, and Arizona) (7 CFR 2851.680 through 2851.714) or in the U.S. Standards for Grades of Grapefruit (Texas and States other than Florida, California and Arizona) (7 CFR 2851.620 through 2851.653).

[47 FR 1266, Jan. 12, 1982]

PART 907—NAVEL ORANGES GROWN IN ARIZONA AND DESIGNATED PART OF CALIFORNIA

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AUTHORITY: Secs. 1-19, 48 Stat. 31, as amended; 7 U.S.C. 601-674.

SOURCE: 19 FR 8130, Dec. 10, 1954, unless otherwise noted. Redesignated at 26 FR 12751, Dec. 30, 1961.

Subpart—Order Regulating Handling

DEFINITIONS

§ 907.1 Secretary.

"Secretary" means the Secretary of Agriculture of the United States or any officer or employee of the United States Department of Agriculture who is, or who may hereafter be, authorized to exercise the powers and perform the duties of the Secretary of Agriculture of the United States.

§ 907.2 Act.

"Act" means Public Act No. 10, 73d Congress (May 12, 1933), as amended and as reenacted and amended by the Agricultural Marketing Agreement Act of 1937, as amended (48 Stat. 31, as amended, 68 Stat. 906, 1047; 7 U.S.C. 601 et seq.).

[19 FR 8130, Dec. 10, 1954, as amended at 21 FR 4708, June 28, 1956. Redesignated at 26 FR 12751, Dec. 30, 1961]

§ 907.3 Person.

"Person" means an individual, partnership, corporation, association, or any other business unit.

§ 907.4 Production area.

"Production area" means the State of Arizona and that part of the State of California south of a line drawn due east and west through the present post office in Red Bluff, Calif.

[33 FR 15471, Oct. 18, 1968]

§ 907.5 Oranges.

"Oranges" means those oranges belonging to the genus Citrus, species sinensis (Linnaeus) Osbeck, and characterized by being seedless and having a navel at the apex, commonly known as navels, and which are grown in the production area.

§ 907.6 Fiscal year.

"Fiscal year" means the twelve-month period ending October 31 of each year.

§ 907.7 Committee.

"Committee" means the Navel Orange Administrative Committee established pursuant to § 907.20.

§ 907.8 Grower and producer.

"Grower" and "producer" are synonymous and mean any person who produces oranges for market.

§ 907.9 Handler.

"Handler" means any person who handles oranges.

§ 907.10 Handle.

"Handle" means to buy, sell, consign, transport, or ship oranges (except as a common or contract carrier of oranges owned by another person), or in any other way to place oranges in the current of commerce, between the State of California and any point outside thereof in the continental United States or Canada, or within the State of California, or between the State of Arizona and any point outside thereof in the continental United States or Canada, or within the State of Arizona. The term "handle" does not include (a) the sale of oranges on the tree; (b) the transportation of oranges to a packinghouse for the purpose of having such oranges prepared for market and such preparation for market; (c) the storage of oranges within the production area under such rules and regulations as the committee, with the approval of the Secretary, may prescribe; or (d) the sale of oranges at retail by a person in his capacity as such retailer.

[19 FR 8130, Dec. 10, 1954. Redesignated at 26 FR 12571, Dec. 30, 1961, and amended at 50 FR 1430, Jan. 11, 1985]

§ 907.11 Oranges available for current shipment.

"Oranges available for current shipment" means all oranges as measured by the total tree crop.

§ 907.12 Tree crop.

"Tree crop" means the total quantity of oranges on the trees as determined by the committee.

§ 907.13 Early maturity oranges.

"Early maturity oranges" means any oranges that have reached maturity, as measured by applicable State laws, in advance of general maturity in the same prorate district.

§ 907.14 General maturity.

"General maturity" shall have been reached in any prorate district at such time as the committee determines that allotment shall be distributed to all handlers in such prorate district.

§ 907.15 Carton.

"Carton" means the standard container number 58 as defined in section 828.83 of the Agricultural Code of California, as amended, of a capacity of approximately 38½ pounds of or-

anges, or such other container and capacity as may be established by the committee with the approval of the Secretary, or the equivalent thereof.

[21 FR 4708, June 28, 1956. Redesignated at 26 FR 12751, Dec. 30, 1961]

§ 907.16 Central marketing organization.

"Central marketing organization" means any organization which markets oranges for more than one handler pursuant to a written contract between such organization and each such handler.

§ 907.17 Carload.

"Carload" means a quantity of oranges equivalent to 1,000 cartons of oranges, or such other quantity of oranges, as may be established by the committee with the approval of the Secretary.

[50 FR 1430, Jan. 11, 1985]

§ 907.18 Export.

"Export" means shipments of oranges to points outside the continental United States and Canada.

[50 FR 1430, Jan. 11, 1985]

ADMINISTRATIVE BODY

§ 907.20 Establishment and membership.

There is hereby established a Navel Orange Administrative Committee consisting of 11 members, for each of whom there shall be one alternate, and for each grower and handler member an additional alternate. Six of the members and their respective alternates shall be growers. Four of the members and their respective alternates shall be handlers, or employees of handlers, or employees of central marketing organizations. One member of the committee and an alternate of such member shall be nominated as provided in §907.22(f). The six members of the committee who shall be growers are referred to in this part as "grower" members of the committee and the four members who shall be handlers, or employees of handlers, or employees of central marketing organizations are referred to in this part as "handler" members of the committee.

[50 FR 11430, Jan. 11, 1985]

§ 907.21 Term of office.

The term of office of each member and alternate member of the committee shall be for a period of two years, and such terms shall begin on October 1 of each even-numbered year: *Provided,* That such members and alternates shall serve in such capacities for the portion of the term of office for which they are selected and qualify and until their respective successors are selected and have qualified. The consecutive terms of office of members, not including alternate members or additional alternate members, shall be limited to three terms. No person having served three consecutive terms shall serve as a member, alternate member, or additional alternate member for the next succeeding term of office. Members of the committee who have served three consecutive two-year terms as of October 1, 1984, are not eligible to serve on the committee as a member, alternate member, or additional alternate member until October 1, 1986.

[50 FR 1430, Jan. 11, 1985]

§ 907.22 Nominations.

(a) With respect to paragraphs (b) and (c) of this section, the time and manner of nominating members, alternate members, and additional alternate members of the committee shall be prescribed by the Secretary. With respect to paragraph (d) of this section, the committee, with the approval of the Secretary, shall adopt procedural rules and regulations to be observed for (1) the nomination of candidates for member, alternate member, and additional alternate member positions and (2) the conducting of such nominations by mail balloting.

(b) Any cooperative marketing organization, or the growers affiliated therewith, which handled more than 50 percent of the total volume of oranges handled in fresh domestic channels, including Canada, during the fiscal year in which nominations for members and alternate members of the committee are submitted shall nominate three grower members, three alternate grower members, three additional alternate grower members, two handler members, two alternate handler members, and two additional

alternate handler members of the committee.

(c) All cooperative marketing organizations which are not qualified under paragraph (b) of this section, or the growers affiliated therewith, shall nominate one grower member, one alternate grower member, one additional alternate grower member, one handler member, one alternate handler member, and one additional alternate handler member.

(d) All growers who are not qualified under paragraphs (b) and (c) of this section shall nominate two grower members, two alternate grower members, two additional alternate grower members, one handler member, one alternate handler member, and one additional alternate handler member.

(e) When voting for nominees, each grower shall be entitled to cast one vote which shall be cast on behalf of such grower, the grower's agents, subsidiaries, affiliates, and representatives. The votes of cooperative marketing organizations voting pursuant to paragraph (c) of this section shall be weighted in accordance with the volume of oranges handled during the fiscal year in which such nominations are made.

(f) The members of the committee selected by the Secretary pursuant to § 907.23 shall meet on a date designated by the Secretary and, by a concurring vote of at least six members, shall nominate a member and an alternate member of the committee, which persons shall not be growers or handlers, or employees, agents, or representatives of a grower or handler (other than a charitable or educational institution which is a grower or handler), or of a central marketing organization.

(g) Grower and handler member, alternate member, and additional alternate member positions may be allocated pursuant to § 907.29(n) of this part.

[19 FR 8130, Dec. 10, 1954. Redesignated at 26 FR 12751, Dec. 30, 1961, and amended at 33 FR 15471, Oct. 18, 1968; 50 FR 1430, Jan. 11, 1985; 50 FR 4957, Feb. 5, 1985]

§ 907.23 Selection.

From the nominations made pursuant to § 907.22(b) or from other qualified growers and handlers, the Secretary shall select three grower members and two handler members of the committee, an alternate and an additional alternate to each such member. From the nominations made pursuant to § 907.22 (c) or from other qualified growers and handlers, the Secretary shall select one grower member and one handler member of the committee, an alternate and an additional alternate to each such member. From the nominations made pursuant to § 907.22(d) or from other qualified growers and handlers, the Secretary shall select two grower members and one handler member of the committee, an alternate and an additional alternate to each such member. From the nominations made pursuant to § 907.22(f) or from other qualified persons, the Secretary shall select one member of the committee and an alternate to such member.

[50 FR 1431, Jan. 11, 1985]

§ 907.24 Failure to nominate.

If nominations are not made within the time and in the manner specified by the Secretary pursuant to § 907.22(a), the Secretary may, without regard to nominations, select the members and alternate members of the committee on the basis of the representation provided for in § 907.23.

§ 907.25 Acceptance.

Any person selected by the Secretary as a member or as an alternate member of the committee shall qualify by filing a written acceptance with the Secretary within ten days after being notified of such selection. m

§ 907.26 Vacancies.

To fill any vacancy occasioned by the failure of any person selected as a member or as an alternate member of the committee to qualify or in the event of the death, removal, resignation, or disqualification of any member or alternate member of the committee, a successor to the unexpired term of such member or alternate member of the committee shall be selected by the Secretary from nominations made in the manner specified in § 907.22 or from other qualified persons. If the names of nominees to fill any such vacancy are not made

available to the Secretary within fifteen days after such vacancy occurs the Secretary may fill such vacancy without regard to nominations, which selection shall be made on the basis of representation provided for in § 907.23.

§ 907.27 Alternate members.

An alternate member of the committee, during the absence or at the request of the member for whom he is an alternate, shall act in the place and stead of such member: *Provided,* That a member may designate any alternate member to serve in the place and stead of such member, if the alternate member so designated was selected from the same group which was authorized to nominate the member; unless another alternate member is so designated by a grower member, his alternate shall act for the member and, in the absence of such alternate, the alternate shall so act, and in his absence the additional alternate shall so act. In the event of death, removal, resignation, or disqualification of a member, his alternate shall act for him until a successor for such member is selected and has qualified.

[19 FR 8130, Dec. 10, 1954. Redesignated at 26 FR 12751, Dec. 30, 1961, and amended at 33 FR 15471, Oct. 18, 1968]

§ 907.28 Powers.

The committee shall have the following powers:

(a) To administer the provisions of this part in accordance with its terms;

(b) To make and adopt rules and regulations to effectuate the terms and provisions of this part;

(c) To receive, investigate, and report to the Secretary complaints of violations of the provisions of this part; and

(d) To recommend to the Secretary amendments to this part.

§ 907.29 Duties.

The committee shall have the following duties:

(a) To select a chairman and such other officers as may be necessary, and to define the duties of such officers;

(b) To appoint such employees, agents, and representatives as it may deem necessary, and to determine the compensation and to define the duties of each;

(c) To submit to the Secretary at the beginning of each fiscal year a budget for such fiscal year, including a report in explanation of the items appearing therein and a recommendation as to the rate of assessment for such fiscal year;

(d) To keep minutes, books, and records which will reflect all of the acts and transactions of the committee and which shall be subject to examination by the Secretary;

(e) To prepare a monthly statement of the financial operations of the committee and to make copies of each such statement available to growers and handlers for examination at the office of the committee;

(f) To cause its books to be audited by a certified public accountant at least once each fiscal year, and at such other times as the Secretary may request;

(g) To act as intermediary between the Secretary and any grower or handler;

(h) To provide an adequate system for determining the total quantity of oranges available for current shipment, and to make such determinations, including determinations by grade, size, and maturity conditions, as it may deem necessary, or as may be prescribed by the Secretary, in connection with the administration of this part;

(i) To investigate the growing, handling, and marketing conditions with respect to oranges, and to assemble data in connection therewith;

(j) To submit to the Secretary such available information, including verified reports, as he may request;

(k) To notify producers and handlers of meetings of the committee to consider recommendations for regulation;

(l) To consult with such representatives of growers or groups of growers as may be deemed necessary and to pay the travel expenses incurred by such representatives in attending committee meetings at the request of the committee: *Provided,* That the committee shall not pay the travel expenses of more than three such representatives in connection with any one meeting of the committee;

(m) To investigate compliance with the provisions of this part; and

(n) With the approval of the Secretary, to reapportion the number of grower members or handler members on the Navel Orange Administrative Committee who are nominated pursuant to § 907.22 (c) and (d). Any such reapportionment shall be based, insofar as practicable, upon the proportionate amount of navel oranges handled by the respective types of marketing organizations: *Provided,* That each of the grower groups described in § 907.22 (c) and (d) shall be entitled to nominate at least one grower member and one handler member together with their respective alternates.

§ 907.30 Procedure.

(a) A majority of the committee shall constitute a quorum and any action of the committee shall require at least six concurring votes.

(b) The committee may vote by telegraph, telephone, or other means of communication; and any votes so cast shall be confirmed promptly in writing: *Provided,* That if an assembled meeting is held, all votes shall be cast in person.

§ 907.31 Expenses and compensation.

The members and alternates of the committee shall be reimbursed for expenses necessarily incurred by them in the performance of their duties under this part. Members and alternates shall receive compensation at a rate to be recommended by the committee and approved by the Secretary which rate shall not exceed $100 per day or portion thereof spent in performing such duties. The member and alternate nominated and selected pursuant to § 907.22(f) shall receive compensation at a rate to be recommended by the committee and approved by the Secretary which rate may be greater than $100, but shall not exceed $250 per day or portion thereof spent in performing such duties.

[50 FR 1431, Jan. 11, 1985]

§ 907.32 Annual review and meeting.

The committee shall, as soon as practicable after the marketing of the crop is completed, prepare and mail an annual report to the Secretary and to each handler and grower of record. This annual report shall contain at least: (a) A complete review, by prorate districts, of the regulatory operations during the fiscal year, as conducted under the marketing policy established pursuant to § 907.50 (a); (b) an appraisal of the effect of such regulatory operations upon the competitive status of the navel orange industry; (c) recommendations for changes in the program; and (d) notice of the time and place of an open meeting, to be held as soon as practicable after the mailing of the annual report, to review the whole record of the operations of this part.

[19 FR 8130, Dec. 10, 1954, as amended at 21 FR 4708, June 28, 1956. Redesignated at 26 FR 12751, Dec. 30, 1961]

§ 907.33 Research and development.

The committee, with the approval of the Secretary, may establish or provide for the establishment of marketing research and development projects designed to assist, improve, or promote the marketing, distribution, and consumption of navel oranges, the expense of such projects to be paid from funds collected pursuant to this part.

[27 FR 10088, Oct. 13, 1962]

§ 907.34 Consumer affairs advisors.

The committee may appoint such consumer affairs advisors as it deems appropriate and determine the compensation and define the duties of such advisors.

[50 FR 1431 Jan. 11, 1985]

Expenses and Assessments

§ 907.40 Expenses.

The Navel Orange Administrative Committee is authorized to incur such expenses as the Secretary finds are reasonable and likely to be incurred to carry out the functions of the committee under this subpart during each fiscal year.

[35 FR 16360, Oct. 20, 1970]

§ 907.41 Assessments.

(a) Each person who first handles oranges shall, with respect to the or-

anges handled by him, pay to the committee upon demand, such person's pro rata share of the expenses which the Secretary finds are reasonable and likely to be incurred each fiscal year. Each such person's share of such expenses shall be equal to the ratio between the total quantity of such oranges handled by him as the first handler thereof during the applicable fiscal year, and the total quantity of such oranges so handled by all persons during the same fiscal year. The payment of assessments for the maintenance and functioning of the committee may be required under this part throughout the period it is in effect irrespective of whether particular provisions thereof are suspended or become inoperative.

(b) The Secretary shall fix the rate of assessment to be paid by each such person. At any time during or after the fiscal year, the Secretary may increase the rate of assessment in order to secure sufficient funds to cover any later finding by the Secretary relative to the expense which may be incurred. Such increase shall be applied to all oranges handled during the applicable fiscal year. In order to provide funds for the administration of the provisions of this part, the committee may accept the payment of assessments in advance, and may borrow money in any amount not to exceed 10 percent of the estimated expenses set forth in its budget for the then current fiscal year.

(c) The committee may, with the approval of the Secretary, maintain a suit in its own name, or in the names of its members, to enforce the payment of assessments levied under this section.

(d) Assessments not paid within a period of time prescribed by the committee may be made subject to interest or late payment charges, or both. The period of time, rate of interest, and late payment charge shall be as recommended by the committee and approved by the Secretary: *Provided*, That when interest or late payment charges are in effect, they shall be applied to all assessments not paid within the prescribed period of time.

[19 FR 8130, Dec. 10, 1954. Redesignated at 26 FR 12751, Dec. 30, 1961, and amended at 35 FR 16360, Oct. 20, 1970; 50 FR 1431, Jan. 11, 1985]

§ 907.42 Accounting.

(a) If, at the end of a fiscal year, the assessments collected are in excess of expenses incurred, such excess shall be accounted for in accordance with one of the following:

(1) If such excess is not retained in a reserve or used to defray necessary expenses of liquidation, as provided in paragraph (a)(2) of this section, it shall be refunded proportionately to the persons from whom it was collected: *Provided*, That any sum paid by a person in excess of his pro rata share of the expenses during any fiscal year may be applied by the committee at the end of such fiscal year to any outstanding obligations due the committee from such person.

(2) The Committee, with the approval of the Secretary, may establish and maintain during one or more fiscal years an operational monetary reserve in an amount not to exceed approximately one half of a fiscal year's operational expenses. Upon approval of the Secretary, funds in such reserve shall be available for use by the committee (i) for all expenses authorized pursuant to § 907.40 and (ii) to cover necessary expenses of liquidation in the event of termination of this part. Upon termination of this part, any funds not required to defray the necessary expenses of liquidation shall be disposed of in such manner as the Secretary may determine to be appropriate: *Provided*, That to the extent practical, such funds shall be returned pro rata to the persons from whom such funds were collected.

(b) All funds received by the committee pursuant to the provisions of this part shall be used solely for the purposes specified in this part, and shall be accounted for in the manner provided in this part. The Secretary may, at any time, require the committee and its members to account for all receipts and disbursements.

[19 FR 8130, Dec. 10, 1954. Redesignated at 26 FR 12751, Dec. 30, 1961, and amended at 33 FR 15472, Oct. 18, 1968]

REGULATION

§ 907.50 Marketing policy.

(a) Prior to the recommendation for regulation for each prorate district, the committee shall submit to the Secretary its marketing policy for the ensuing season. Such marketing policy shall contain the following information: (1) The available crop of oranges in the prorate district, including estimated quality and composition of sizes; (2) the estimated utilization of the crop, showing the quantity and percentages of the crop that will be marketed in domestic, export, and by-product channels, together with quantities otherwise to be disposed of; (3) a schedule of estimated weekly shipments to be recommended to the Secretary during the ensuing season; (4) available supplies of competitive oranges in all producing areas of the United States; (5) level and trend of consumer income; (6) estimated supplies of competitive citrus commodities; and (7) any other pertinent factors bearing on the marketing of oranges. In formulating its marketing policy, the committee should give due consideration to the onset and duration of prorate, and size regulation. In the event that it becomes advisable to substantially modify such marketing policy, the committee shall submit to the Secretary a revised marketing policy setting forth the information as required in this paragraph.

(b) All meetings of the committee held for the purpose of formulating such marketing policies shall be open to growers and handlers. The committee shall give notice to growers by publication of notice of such meetings in such newspapers as they deem appropriate and shall advise all handlers by mail of such meetings.

(c) The committee shall transmit a copy of each marketing policy report or revision thereof to the Secretary and to each grower and handler who files a request therefor. Copies of all such reports shall be maintained in the office of the committee where they shall be available for examination by growers and handlers.

[19 FR 8130, Dec. 10, 1954. Redesignated at 26 FR 12751, Dec. 30, 1961, and amended at 50 FR 1431, Jan. 11, 1985]

§ 907.51 Recommendations for volume regulation.

(a) The committee may recommend to the Secretary the total quantity of oranges which it deems advisable to be handled during the next succeeding week in each prorate district. If, for any reason, the committee recommends the issuance of volume regulation but fails to recommend to the Secretary the total quantity of oranges which it deems advisable to be handled during the next succeeding week in each prorate district, views of the committee members with respect to its failure to act shall be submitted promptly to the Secretary.

(b) In making its recommendations, the committee shall provide equity of marketing opportunity to handlers in all districts and shall give due consideration to the following factors: (1) Market prices for oranges, including market prices by grades and sizes; (2) supply of oranges on track at, and en route to, the principal markets; (3) supply, maturity, and condition of oranges in the area of production, including the grade and size composition thereof; (4) market prices and supplies of citrus fruits from California, Arizona, and competitive producing areas, and supplies of other competitive fruits; (5) trend and level in consumer income; and (6) other relevant factors.

(c) At any time prior to or during a week for which the Secretary, pursuant to § 907.52, has fixed the quantity of oranges which may be handled, the committee may, if such action is deemed advisable, recommend to the Secretary that such quantity be increased for such week. Any such recommendation, together with the committee's reasons for such recommendation, shall be submitted promptly to the Secretary.

(d) The committee shall, with the approval of the Secretary, adopt procedural rules and regulations to effectuate the provisions of this § 907.51.

[19 FR 8130, Dec. 10, 1954. Redesignated at 26 FR 12751, Dec. 30, 1961, and amended at 33 FR 15472, Oct. 18, 1968; 50 FR 1431, Jan. 11, 1985]

§ 907.52 Issuance of volume regulation.

Whenever the Secretary shall find, from the recommendations and information submitted by the committee, or from other available information, that to limit the quantity of oranges which may be handled in each prorate district during a specified week will tend to effectuate the declared policy of the act, the Secretary shall fix such quantity. Such regulation may be made effective, as authorized by the act, irrespective of whether the season average price for navel oranges is in excess of the parity price specified therefor in the act. The quantity so fixed may be increased by the Secretary at any time prior to or during such week.

[50 FR 1432, Jan. 11, 1985]

§ 907.53 Prorate bases.

(a) Each person who has oranges available for current shipment shall submit to the committee, at such time and in such manner as may be designated by the committee, and upon forms made available by it, a written application for a prorate base and for allotments as provided in this part.

(b) Such application shall be substantiated in such manner and shall be supported by such evidence as the committee may require, and shall include at least (1) the name and address of the producer or duly authorized agent, if any, for each grove or portion thereof, the fruit of which is included in the quantity of oranges available for current shipment by the applicant; (2) an accurate description of the location of each such grove or portion thereof, including the number of acres contained therein; (3) an estimate of the total quantity of oranges available for current shipment in terms of a unit of measure designated by the committee, contained in each grove or portion thereof described in paragraph (b)(2) of this section; and (4) an estimate of the total quantity of oranges available for current shipment by the applicant in terms of a unit of measure designated by the committee. If at the time of filing of an application under this section the committee finds that there is an error, omission, inaccuracy, or inadequacy in such application, or that any estimates contained in such application are not reasonably calculated to apprise the committee of the information required by this section, it shall return the application to the applicant for correction or completion. Applicants may resubmit applications to the committee for its consideration at any subsequent time.

(c) Each application shall include a certification by the handler that the handler has control, for all purposes relating to this part, of the oranges described in the application.

(d) If the quantity of oranges available for current shipment by any person is increased or decreased by the acquisition or loss of the control required by paragraph (c) of this section, such person shall submit promptly a report thereof to the committee upon forms made available by it, which report shall be verified in such manner as the committee may require.

(e) If any person gains or loses control of oranges as required by paragraph (c) of this section, there shall be a corresponding increase or decrease in the quantity of oranges available for current shipment by such person. If it is determined by the committee that any person who has lost control of oranges as required by paragraph (c) of this section has handled a quantity of such oranges less than the quantity that could have been handled under the allotments issued thereon, the quantity of oranges available for current shipment by such person shall be adjusted by deducting therefrom, over such period as may be determined by the committee a quantity of oranges equivalent to the quantity upon which allotments were issued but which were not utilized thereon and, in the event the change in control of oranges is occasioned by a bona fide transfer of the ownership of the real property on which oranges were produced, the person gaining the control of such oranges shall have his quantity of oranges available for current shipment adjusted by adding thereto a quantity of oranges equal to that which is so deducted.

(f) When any person having a prorate base has remaining a quantity smaller than such person's allotment,

such person shall be removed from the prorate base or that prorate base shall be reduced so that the allotment based thereon shall not exceed the quantity of oranges remaining under such handler's control: *Provided*, That such handler shall receive due allotment to the extent necessary to pay back loans which the handler is obligated to repay in any week that repayment of loans may be due.

(g) The committee shall determine the accuracy of the information submitted pursuant to this section. Except as provided in (b) of this section, whenever the committee finds that there is an error, omission, inaccuracy, or inadequacy in any such information, it shall correct the same after granting the person who submitted such report a reasonable opportunity to discuss with the committee the factors considered in making the correction. If it is determined that an error, omission, inaccuracy, or inadequacy has resulted in the establishment of a smaller or a larger quantity of oranges available for current shipment than that to which a person was entitled under this part, such quantity shall be increased or decreased, over such period as may be determined by the committee, by an amount necessary to correct the error, omission, inaccuracy, or inadequacy.

(h) During any week when volume regulation is likely to be recommended, the committee shall compute, with respect to each prorate district, the total quantity of oranges available for current shipment by each person who has applied for a prorate base and for allotments, except as provided in paragraph (b) of this section. On the basis of such computation, the committee shall fix a prorate base for each person who is entitled thereto. Such prorate base shall represent the ratio between the total quantity of oranges available for current shipment in the particular prorate district by each applicant and the total quantity of oranges available for current shipment in such district by all such applicants. The committee shall notify the Secretary of the prorate base fixed for each person and shall notify each such person of the prorate base so fixed.

(i) The committee shall, with the approval of the Secretary, adopt procedural rules and regulations to effectuate the provisions of this § 907.53.

[19 FR 8130, Dec. 10, 1954, as amended at 21 FR 4708, June 28, 1956. Redesignated at 26 FR 12751, Dec. 30, 1961, and amended at 33 FR 15472, Oct. 18, 1968; 35 FR 16360, Oct. 20, 1970; 50 FR 1432, Jan. 11, 1985]

§ 907.54 Allotments.

(a) *General maturity allotments.* Whenever the Secretary has fixed the quantity of oranges which may be handled during any week in a prorate district, the committee shall calculate the quantity of oranges which may be handled by each such person during such week. The said quantity shall be the allotment of such person and shall be in an amount equivalent to the product of the prorate base of such person and the total quantity of oranges grown in such prorate district and fixed by the Secretary as the total quantity of oranges which may be handled during such week. The committee shall give reasonable notice to each person of the allotment computed for such person pursuant to this part.

(b) *Marketing incentive allotments.* During any week in which volume regulation is in effect, any handler may handle in addition to other allotment an amount of oranges equivalent to 10 percent of the handler's weekly allotment as determined under paragraph (a) of this section in each of three separate weeks and at such other times and in such other amounts as may be recommended by the committee and approved by the Secretary. Use of marketing incentive allotment may be made by the handler upon prior notification to the committee. This incentive increase is in addition to the allowance for overshipments provided in §907.55. The committee shall, with the approval of the Secretary, adopt rules and regulations to establish the types of market development programs that would be available for marketing incentive allotments, as well as provide for a deduction against the quantity of oranges which a handler has available for current shipment in the event that the handler fails to use all or a portion

of the marketing incentive allotment issued or uses such allotment for other than specified purposes. Such rules and regulations may also require that the handler, after each marketing incentive allotment period is over, furnish the committee with reports, records, and other documentation to substantiate the use of the marketing incentive allotment.

[50 FR 1432, Jan. 11, 1985]

§ 907.55 Overshipments.

During any week for which the Secretary has fixed the total quantity of oranges which may be handled, any person who has received an allotment for such week as calculated under § 907.54(a), and whose total allotment is not loaned, or is not required for the repayment of an allotment loan or as a deduction for a prior overshipment, may handle in addition to such allotment an amount of such oranges equivalent to 20 percent of such allotment, or one carload, whichever is the greater: *Provided, however,* That the committee may, with the approval of the Secretary, reduce such 20 percent to a percentage not less than 10 percent: *And Provided Further,* That, if subsequent to the determination of general maturity, allotment (other than short life allotment) is forfeited in any prorate district during any week such forfeiture shall be used to reduce the amount of maximum permissible overshipments made during such week unless the forfeiting handler shall have made a bona fide and timely offer to the committee to lend the handler's undershipment. Such forfeiture shall be first applied to handlers within such district in which the forfeiture occurred and second to qualified handlers in other districts. Allocation of forfeitures to handlers who have overshipped shall be made in proportion to, but not in excess of, the quantity overshipped by each such handler. In the case of short life allotments, any forfeiture thereof shall be credited as above provided only against overshipment of allotments issued pursuant to § 907.54(a). However, no handler who has overshipped more than the maximum permissible under this section shall participate in the credits allowed by this provision. The quantity of oranges so handled in excess of each such person's allotment (but not exceeding an amount equivalent to the excess shipments permitted under this section) shall be deducted from each such person's allotment for the next week: *Provided,* That no such deduction shall apply when such quantity is handled pursuant to early maturity allotment issued under § 907.60 or its entirely reduced by application of forfeited allotment. If such person's allotment for such week is in an amount less than the excess shipments permitted under this section, as reduced by the application of forfeited allotment, the remaining quantity shall be deducted from succeeding weekly allotments issued to each such person until such excess has been entirely offset: *And Provided Further,* That no overshipment incurred during one season shall be deducted from allotments issued during the following season. The provisions of this section shall not apply to any person who, during any week, has not received an allotment under this subpart for such week. The committee, with the approval of the Secretary, shall adopt procedural rules and regulations to effectuate the provisions of this § 907.55.

[50 FR 1433, Jan. 11, 1985]

§ 907.56 Undershipments.

If any person handles during any week a quantity of oranges, covered by a regulation issued pursuant to § 907.52, in an amount less than the allotment of oranges for such week, such person may handle, in addition to such person's allotment for the next two succeeding weeks only, a quantity of such oranges equivalent to such undershipment except that the undershipment of early maturity allotment shall not entitle a handler to so handle an additional quantity of oranges: *Provided,* That, with the approval of the Secretary, the committee may increase or decrease the number of weeks over which undershipments of allotment may be carried forward.

[50 FR 1433, Jan. 11, 1985]

§ 907.57 Allotment loans.

(a) A person to whom allotments have been issued under general maturity or the short life provisions of this subpart may, in accordance with the provisions of this section, lend such allotments to other persons, within any prorate district, to whom allotments also have been issued. Such loans shall be confirmed to the committee by both parties thereto within 48 hours after any such agreement has been entered into, and such agreements shall include a date for the repayment of such allotments to the lender during the then current marketing season. If, on the date of repayment specified in the loan agreement, the borrower has insufficient allotment to repay such loan, he shall repay such loan as soon after the repayment date as he has allotments available to him for that purpose: *Provided,* That no loans made during one season shall be required to be repaid from allotments issued during the following season.

(b) A person desiring to loan all or part of his allotment shall attempt to do so first within his own district and if he so chooses, may request the committee to act in his behalf. A person desiring to loan allotment to persons outside his own district shall request the committee to arrange the loan on his behalf with the committee first offering the loan to persons within the district who file requests for such loans and, failing to do so, may then arrange to offer the loan outside of the district in an equitable manner: *Provided,* That offers to loan short life allotment to persons within any district to whom allotments have been issued under general maturity shall be arranged through the committee. In each case, the committee shall confirm all such transactions immediately after the completion thereof by memorandum addressed to the parties concerned, which memorandum shall be deemed to satisfy the requirements of paragraph (a) of this section as to a confirmation of the loan agreement to the committee.

(c) An allotment shall be loaned, pursuant to paragraph (a) of this section, for use only during the week for which such allotment was issued. Persons securing repayment of an allotment loan may use such allotment only during the week in which the repayment is made.

(d) No allotment which has been loaned may again be loaned by the borrower, or by the lender after the repayment thereof.

(e) No allotment may be loaned from one handler to another when such loan is brought about by the payment of a consideration.

(f) The committee may, with the approval of the Secretary, adopt procedural rules and regulations to effectuate the provisions of this § 907.57.

[19 FR 8130, Dec. 10, 1954, as amended at 21 FR 4708, June 28, 1956. Redesignated at 26 FR 12751, Dec. 30, 1961, and amended at 33 FR 15472, Oct. 18, 1968; 35 FR 16360, Oct. 20, 1970]

§ 907.58 Assignment of allotment certificates.

In connection with all handling of oranges other than shipments by rail car, each handler who first handles oranges shall at the time of handling issue to the consignee thereof, or his agent, an assignment of allotment certificate covering each quantity of oranges so handled. Such assignment of the allotment certificate shall be on such forms and shall be issued in such manner as prescribed by the committee and shall contain such information as the committee may require.

§ 907.59 Priority of allotments.

During any week in which a person receives an allotment, and has the right to handle a quantity of oranges in addition to the quantity represented by such allotment pursuant to § 908.54, by reason of (a) an undershipment of an allotment, pursuant to § 907.56; or (b) the repayment of a loaned allotment, pursuant to § 907.57; or (c) a borrowed allotment, pursuant to § 907.57, and such person handles a quantity of oranges which is less than the total quantity of such oranges which such person may handle during such week, the amount of such oranges handled shall first apply to such person's current weekly allotment (or to that portion which is not used pursuant to § 907.55 or § 907.57). The remaining if any, shall be applied in the

following order: Second, to any undershipment of allotments, pursuant to § 907.56; third, to any allotment repaid to such person, pursuant to § 907.57; fourth, to any allotment borrowed, pursuant to § 907.57.

[19 FR 8130, Dec. 10, 1954. Redesignated at 26 FR 12751, Dec. 30, 1961, and amended at 50 FR 1433, Jan. 11, 1985]

§ 907.60 Early maturity allotments.

Notwithstanding the provisions of § 907.54(a) the committee may, prior to the reaching of general maturity, issue special allotments for the handling of oranges of early maturity. Handlers controlling oranges of early maturity may apply to the committee for such allotments on forms prescribed by the committee and shall furnish to the committee such information as it may require. On the basis of all available information and after consideration of all of the factors enumerated in § 907.51(b) the committee shall determine the extent to which early maturity allotment shall be granted. Total early maturity allotments approved by the committee for each prorate district shall be allocated in an equitable manner among the requesting handlers who qualify therefor. Early maturity allotments issued to any handler may be used only during the week for which issued, and the undershipment of any such, allotment shall not entitle such handler to handle an additional quantity of oranges due to such undershipment. Upon the reaching of general maturity, the quantity of oranges available for current shipment of any handler who failed to use all of the early maturity allotments issued to such handler shall be adjusted by deducting therefrom a quantity of oranges equivalent to the total quantity of such handler's oranges for which early maturity allotments were issued but were not used. A person to whom early maturity allotments have been issued may, after approval by the committee, transfer such allotments to other persons to whom such allotments also have been issued: *Provided,* That, upon such transfer of allotment, the transferee shall be obligated to use the transferred allotment during the week for which it was issued and if such handler fails to do so shall have such handler's oranges available for current shipment adjusted in the same manner as if the transferred allotment had been issued to such handler by the committee. The committee shall, with the approval of the Secretary, adopt procedural rules and regulations to effectuate the provisions of this part. Early maturity allotments issued, and any transfer thereof, under this section shall be on a prorate district basis.

[19 FR 8130, Dec. 10, 1954. Redesignated at 26 FR 12751, Dec. 30, 1961, and amended at 27 FR 10088, Oct. 13, 1962; 35 FR 16360, Oct. 20, 1970; 50 FR 1433, Jan. 11, 1985]

§ 907.61 Short life allotments.

Notwithstanding the provisions of § 907.54(a) the committee shall withhold from the allotment of handlers on a uniform proportionate basis for all handlers, an amount sufficient to permit handlers controlling oranges of short life to handle during the normal marketing period of such short life oranges as large a proportion of oranges as the average which will be handled by all handlers. Handlers controlling oranges of short life may apply for such withheld allotment, and such application shall be made on forms supplied by the committee and shall be accompanied by information necessary to permit the committee to determine the validity of such applicant's claim to allotment. The committee shall determine, on the basis of all available information, the extent to which a handler needs allotment under the provisions of this section and pursuant to such determination shall allocate such allotment to such handler at a uniform weekly rate, insofar as practicable, during the normal marketing period of his short life oranges. Such determination and allotment issued pursuant thereto shall permit the handling in total during periods of open movement and under volume regulations of a quantity of short life oranges equal proportionately to the average to be handled by all handlers of oranges within the prorate district. After a handler of short life oranges has received allotment sufficient to permit such total handling, allotment

thereafter due such handler of short life oranges shall be allocated to handlers from whom allotment has been withheld. The committee shall, with the approval of the Secretary, adopt procedural rules and regulations to effectuate the provisions of this part. Allotments withheld, issued, and allocated, and averages computed under this part shall be on a prorate district basis.

[19 FR 8130, Dec. 10, 1954. Redesignated at 26 FR 12751, Dec. 30, 1961, and amended at 33 FR 15473, Oct. 18, 1968; 35 FR 16360, Oct. 20, 1970; 50 FR 1433, Jan. 11, 1985]

§ 907.61a Freeze damage allotments.

Notwithstanding the provisions of § 907.54(a) whenever one or more districts experience severe freeze damage, affecting a substantial portion of the crop within the district, but varying in degree, the committee may issue allotments to each handler in such district based upon requests submitted by handlers, the total allotment to be allocated among the requesting handlers in an equitable manner. Such allotments may be used only during the week for which issued, and the undershipment of such allotments shall not entitle such handler to handle an additional quantity of oranges due to such undershipment. Transfers of allotment if within the district are subject only to the parties notifying the committee. Transfer of allotment between handlers not within the same district shall be by the committee and only between handlers each of whom have been issued allotment pursuant to this section. The committee shall, with approval of the Secretary, adopt rules and regulations to effectuate the provisions of this section.

[33 FR 15473, Oct. 18, 1968, as amended at 50 FR 1433, Jan. 11, 1985]

§ 907.62 Information to central marketing organizations.

The committee shall give any central marketing organization, upon its request, the same notice with respect to prorate bases and allotments applicable to each handler for whom it markets oranges as is given to such handler.

§ 907.63 Recommendations for size regulation.

(a) Whenever the committee finds that the supply and demand conditions for sizes of oranges make it advisable to regulate the handling of sizes of oranges during any period, it shall recommend to the Secretary the sizes of oranges grown in each prorate district which it deems advisable to be handled during said period. Any such recommendation may include a proposal that the handling of oranges shipped to Canada shall be subject to size regulation different from the proposed size regulation applicable to the handling of other shipments of oranges. The committee shall promptly submit such findings and recommendations, together with supporting information, to the Secretary.

(b) In making its recommendations the committee shall give due consideration to the factors referred to in § 907.51(b).

§ 907.64 Issuance of size regulation.

Whenever the Secretary shall find, from the findings, recommendations, and information submitted by the committee, or from other available information, that to limit the handling of oranges by sizes would tend to effectuate the declared policy of the act, the Secretary shall fix the sizes of oranges grown in each such prorate district which may be handled during the specified period. When any such size regulation restricts the handling of a portion of a specified size, the quantity of such size that may be handled by a handler during a particular week shall be established as a percentage of (a) the weekly allotment issued to such handler when volume regulation is in effect, and (b) the total weekly volume handled by such handler when volume regulation is not in effect. Any such regulation may provide that the handling of oranges shipped to Canada shall be subject to size regulation different from the size regulation applicable to the handling of other shipments of oranges. The committee shall be informed immediately of any such regulation issued by the Secretary, and the committee shall prompt-

ly give adequate notice thereof to all handlers.

[19 FR 8130, Dec. 10, 1954, as amended at 21 FR 4708, June 28, 1956. Redesignated at 26 FR 12751, Dec. 30, 1961, and amended at 50 FR 1433, Jan. 11, 1985]

§ 907.65 Exemptions from size regulation.

In the event oranges are regulated pursuant to § 907.64, the committee shall issue one or more exemption certificates to any producer who furnishes evidence satisfactory to the committee that he will be prevented by reason of such regulation from having as large a proportion of oranges handled as the average proportion of oranges which may be handled by all other producers in the same prorate district. Such exemption certificate shall permit the respective producer to whom the certificate is issued to handle or have handled a percentage of his oranges equal to the percentage determined as aforesaid. Shipments of oranges under exemption certificates issued pursuant to this section shall be subject to and limited by such regulations as may be effective under § 907.52 at the time of the respective shipment. The committee shall adopt, with the approval of the Secretary, procedural rules by which such exemption certificates will be issued to producers. Such exemption certificates may be transferred to handlers when accompanied by oranges covered by such certificates.

§ 907.66 Prorate districts.

For purpose of administration of this part, and in recognition of the fact that there are general differences in maturity and keeping quality of oranges between certain geographical sections of the production area, the production area shall be divided into three prorate districts as follows:

(a) District 1 shall include that part of the State of California which is south of a line drawn due east and west through the present post office in Red Bluff, Calif., and north of a line drawn due east and west through the present post office in Gorman, Calif., and west of the extension of a line drawn due north and south through the present post office in White Water, Calif., but excluding San Luis Obispo and Santa Barbara Counties.

(b) District 2 shall include that part of the State of California west of a line drawn due north and south through the present post office in White Water, Calif., and south of a line drawn due east and west through the present post office in Gorman, Calif., but including San Luis Obispo and Santa Barbara Counties.

(c) District 3 shall include the State of Arizona and that part of the State of California east of a line drawn due north and south through the present post office in White Water, Calif.

(d) Upon a determination by the committee that such action is necessary and appropriate it may, with the approval of the Secretary, establish a separate district for that part of the production area north of the 38th Parallel.

[33 FR 15473, Oct. 18, 1968, as amended at 35 FR 16360, Oct. 20, 1970]

§ 907.67 Oranges not subject to regulation.

Except as otherwise provided in this section, nothing contained in this subpart shall be construed to authorize any limitation of the right of the initial handler of oranges to: (a) Handle oranges to charitable institutions for comsumption by such institutions or to relief agencies for distribution by such agencies; (b) handle oranges to commercial processors for processing into products, including juice; (c) export oranges or handle oranges to exporters for export purposes; (d) handle oranges by parcel post or by railway express; or (e) handle oranges in such minimum quantities or in such types of shipments as the committee may, with the approval of the Secretary, prescribe. No assessment shall be levied pursuant to § 907.41 on oranges disposed of for the purposes specified in this section. The committee shall periodically review and prescribe, with the approval of the Secretary, such rules, regulations, and safeguards as it may deem necessary to prevent oranges shipped under the provisions of this section from entering into commercial channels of trade contrary to or in violation of this subpart.

[50 FR 1433, Jan. 11, 1985]

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REPORTS

§ 907.70 Weekly report.

On or before such day of each week as may be designated by the committee, each person who first handles oranges shall report to the committee, in such manner as may be designated and on forms made available by it, the following information with respect to the total of all oranges disposed of by each such handler during the immediately preceding week: (a) The total quantity handled; (b) the total quantity disposed of for manufacture into by-products, showing the identity of each by-products processor involved and the quantity of each; (c) the total quantity disposed of for export, showing the destination and quantity of each such disposition; (d) the total quantity shipped for disposition to persons on relief, including quantity donated for charitable purposes, and shipments by parcel post or express, showing the destination and quantity of each such shipment; and (e) the total quantity disposed of otherwise, showing manner and quantity of each such disposition.

[50 FR 1433, Jan. 11, 1985]

§ 907.71 Manifest report.

Each person who first handles oranges shall furnish to the committee information regarding the size of oranges in each standard packed carton or its equivalent handled by such handler whether such shipments were destined to points in the continental United States or to Canada and shall mail or deliver such information to said committee or its duly authorized representative within 24 hours after shipment is made in such manner as the committee shall prescribe and upon forms prepared by it.

[50 FR 1433, Jan. 11, 1985]

§ 907.72 Other reports.

Upon request of the committee, made with the approval of the Secretary, every person subject to regulation under this part shall furnish to the committee, in such manner and at such times as it may prescribe, such other information as will enable the committee to perform its duties under this part.

RECORDS AND RETENTION

§ 907.73 Reports.

(a) Each handler shall maintain such records which will clearly show the details of such handler's receipts and acquisition of oranges, sales, shipments, dispositions, inventories, and such other specific information as prescribed by the committee and approved by the Secretary which will relate to the handling and disposition of oranges.

(b) All such records specified shall be retained by the handler for a period of three years following the end of the fiscal year in which such transactions occurred. If within the three-year period, the committee notifies the handler in writing that the retention of such records, or specified records, is necessary in connection with a proceeding under the act, a court action, or a compliance investigation by the Secretary or the committee specified in such notice, the handlers shall retain such records, or specified records, until further written notification from the committee. The committee shall give further written notification to the handler when retention of the records is no longer necessary.

(c) Each handler shall make available to authorized representatives of the committee and the Secretary at any time during reasonable business hours all records provided for in this part for examination and audit, and shall permit access to all premises where records are maintained or stored and where oranges are received, stored, prepared for market, or handled. The committee shall make such checks of oranges or audits of handlers' records as it deems appropriate or which are requested by the Secretary to ensure that accurate information as required in this part is being furnished by handlers.

(d) All reports and information submitted by handlers pursuant to the provisions of this part shall be received by and at all times be in the custody of one or more designated employees of the committee. Such em-

ployees shall not disclose to any person, other than the Secretary upon request therefor, data or information obtained or extracted from such reports and records which might affect the trade position, financial condition, or business operation of the particular handler from whom received: *Provided*, That such data and information may be combined, and made available in the form of general reports in which the identities of the individual handlers furnishing the information is not disclosed.

[50 FR 1434, Jan. 11, 1985]

Miscellaneous Provisions

§ 907.80 Compliance.

Except as provided in this part, no person shall handle oranges during any week in which a regulation issued by the Secretary pursuant to § 907.52 is in effect, unless such oranges are, or have been, handled pursuant to an allotment therefor, or unless such person is otherwise permitted to handle such oranges under the provisions of this part; and no person shall handle oranges except in conformity with the provisions of this part and the regulations issued under this part.

§ 907.81 Right of the Secretary.

The members of the committee (including successors and alternates), and any agents, employees, or representatives thereof, shall be subject to removal or suspension by the Secretary at any time. Each and every regulation, decision, determination, or other act of the committee shall be subject to the continuing right of the Secretary to disapprove of the same at any time. Upon such disapproval, the disapproved action of the committee shall be deemed null and void, except as to acts done in reliance thereon or in compliance therewith prior to such disapproval by the Secretary. If the committee, for any reason, fails to perform its duties or exercise its powers under this part, the Secretary may designate another agency to perform such duties and exercise such powers.

§ 907.82 Effective time.

The provisions of this part shall become effective at such time as the Secretary may declare above his signature to this part, and shall continue in force until terminated in one of the ways specified in § 907.83.

§ 907.83 Termination.

(a) The Secretary may at any time terminate the provisions of this part by giving at least one day's notice by means of a press release or in any other manner which he may determine.

(b) The Secretary shall terminate or suspend the operation of any and all of the provisions of this part whenever he finds that such provisions do not tend to effectuate the declared policy of the act.

(c)(1) The Secretary shall terminate the provisions of this subpart at the end of a fiscal year in which the Secretary has found by referendum that such termination is favored by producers who, during a representative period determined by the Secretary, have been engaged in the production for market of oranges in the production area: *Provided*, That such termination shall be effective only if announced on or before September 15 of the then current fiscal year.

(2) To determine whether continuance is favored by producers, the required percentages set forth in the act with respect to producer approval of the issuance of a marketing agreement and order regulating the handling of citrus fruits produced in any area producing what is known as California citrus fruits (approval by three-fourths of the producers who, during a representative period, determined by the Secretary, have been engaged, within the production area, in the production of navel oranges for market; or by producers who, during such representative period, have produced for market at least two-thirds of the volume of navel oranges produced within the production area for market) shall be used. In the event that a referendum is utilized to aid in making this determination, such required percentages for continuance shall be held to be complied with if, of the total number of producers, or the total volume of navel oranges produced for market, as the case may be,

represented in such referendum, the percentage favoring continuance is equal to or in excess of the percentage required.

(d) Upon recommendation of the committee, received not later than January 15 of an odd-numbered year, the Secretary shall conduct a referendum prior to March 15 of such year to ascertain whether continuance of this part is favored by growers as determined in accordance with (c)(2) of this section. The committee, with the approval of the Secretary, shall adopt such rules and regulations as necessary to establish the basis for the recommendation provided for in this section.

(e) The Secretary shall conduct a referendum by August 1 of the sixth year following the effective date of this section and no later than August 1 every sixth year thereafter to find whether, in accordance with paragraph (c) of this section, continuance of the order is favored by producers.

(f) The provisions of this part shall, in any event, terminate whenever the provisions of the act authorizing them cease to be in effect.

[19 FR 8130, Dec. 10, 1954. Redesignated at 26 FR 12751, Dec. 30, 1961, and amended at 27 FR 10088, Oct. 13, 1962; 50 FR 1434, Jan. 11, 1985]

§ 907.84 Proceedings after termination.

(a) Upon the termination of the provisions of this part, the committee shall, for the purpose of liquidating the affairs of the committee, continue as trustees of all the funds and property then in its possession or under its control, including claims for any funds unpaid or property not delivered at the time of such termination.

(b) The said trustees shall (1) continue in such capacity until discharged by the Secretary; (2) from time to time account for all receipts and disbursements and deliver all property on hand, together with all books and records of the committee and of the trustees, to such person as the Secretary may direct; and (3) upon the request of the Secretary execute such assignments or other instruments necessary or appropriate to vest in such person full title and right to all of the funds, property, and claims vested in the committee or the trustees pursuant thereto.

(c) Any person to whom funds, property, or claims have been transferred or delivered, pursuant to this section, shall be subject to the same obligation imposed upon the committee and upon the trustees.

§ 907.85 Effect of termination or amendment.

Unless otherwise expressly provided by the Secretary, the termination of this part or of any regulation issued pursuant to this part, or the issuance of any amendment to either thereof, shall not (a) affect or waive any right, duty, obligation, or liability which shall have arisen or which may thereafter arise in connection with any provision of this part or any regulation issued under this part, or (b) release or extinguish any violation of this part or of any regulation issued under this part, or (c) affect or impair any rights or remedies of the Secretary or of any other person with respect to any such violation.

§ 907.86 Duration of immunities.

The benefits, privileges, and immunities conferred upon any person by virtue of this part shall cease upon its termination, except with respect to acts done under and during the existence of this part.

§ 907.87 Agents.

The Secretary may, by designation in writing, name any officer or employee of the United States, or name any bureau or division in the United States Department of Agriculture, to act as his agent or representative in connection with any of the provisions of this part.

§ 907.88 Derogation.

Nothing contained in this part is, or shall be construed to be, in derogation or in modification of the rights of the Secretary or of the United States (a) to exercise any powers granted by the act or otherwise, or (b) in accordance with such powers, to act in the premises whenever such action is deemed advisable.

§ 907.89 Personal liability.

No member or alternate member of the committee and no employee or agent of the committee shall be held personally responsible, either individually or jointly with others, in any way whatsoever, to any person for errors in judgment, mistakes, or other acts, either of commission or omission, as such member, alternate, employee, or agent, except for acts of dishonesty, willful misconduct, or gross negligence.

§ 907.90 Separability.

If any provision of this part is declared invalid or the applicability thereof to any person, circumstance, or thing is held invalid, the validity of the remainder of this part or the applicability thereof to any other person, circumstance, or thing shall not be affected thereby.

Subpart—Rules and Regulations

Definitions

§ 907.100 Definitions.

(a) "Rules and regulations" means the provisions of this subpart.

(b) "Order No. 907" means Marketing Agreement No. 117 and Order No. 907 (§§ 907.1 to 907.90, inclusive), regulating the handling of navel oranges grown in Arizona and a designated part of California, as from time to time amended.

(c) Except as otherwise prescribed in this subpart, terms used in the rules and regulations shall have the same meaning as when used in §§ 907.1 to 907.90.

(d) "Handle oranges to commercial processors for processing into products, including juice" means the handling of oranges to a person on the list of approved by-product manufacturers, as provided in § 907.131(b).

(e) Pursuant to § 907.17, the quantity of oranges comprising a carload, as such term is therein defined, means a quantity of oranges equivalent to 1,000 cartons of oranges.

(f) Whenever the term "week" or "weekly" appears in Part 907 it shall mean the period from Friday through the following Thursday.

(g) Whenever a time of day is specified in this subpart, it shall mean local time in effect at the headquarters of the committee in Los Angeles, Calif., except when specifically stated otherwise.

(h) The regular weekly meeting of the committee is held on Tuesday at the headquarters in Los Angeles. Whenever the committee determines that its meeting should be at another place or on a day other than the regular weekly meeting day, it shall advise handlers by notice mailed not less than five days before such meeting.

[19 FR 8130, Dec. 10, 1954, as amended at 24 FR 9361, Nov. 20, 1959. Redesignated at 26 FR 12751, Dec. 30, 1961, and amended at 32 FR 15805, Nov. 17, 1967; 34 FR 18223, Nov. 14, 1969; 41 FR 47021, Oct. 22, 1976; 46 FR 42839, Aug. 25, 1981]

General

§ 907.101 Communications.

Unless otherwise prescribed in this subpart or in §§ 907.1 to 907.90 or required by the Navel Orange Administrative Committee, all reports, applications, submittals, requests, and communications in connection with this part shall be addressed as follows:

Navel Orange Administrative Committee, 117 West Ninth Street, Room 913, Los Angeles, Calif. 90015.

[19 FR 8130, Dec. 10, 1954. Redesignated at 26 FR 12751, Dec. 30, 1961, and amended at 34 FR 18223, Nov. 14, 1969]

§ 907.102 Nomination procedure.

(a) The time of nominating grower and handler members and alternate members of the committee shall be not later than 20 days preceding the date of expiration of the terms of the members and alternate members of the committee. The manner of nominating members and alternate members of said committee shall be as follows:

(1) Any cooperative marketing organization which handled more than 50 percent of the total volume of oranges handled during the fiscal year in which nominations for members and alternate members of the committee are submitted, shall, by resolution adopted by its board of directors,

nominate members and alternate members as provided in § 907.22 (b).

(2) All cooperative marketing organizations which market oranges and which are not qualified under § 907.22(b), or the growers affiliated therewith, shall nominate members and alternate members as provided in § 907.22(c). The vote of each such organization shall be weighted, as provided in § 907.22(e), by the quantity of oranges which it handled during the marketing year in which the nominations are made.

(3) Candidates for the member, alternate member and additional alternate member positions referred to in § 907.22(d) shall be nominated in accordance with the following procedures: (i) Any producer who in the current fiscal year is not affiliated with a cooperative marketing organization and delivered navel oranges to handlers which are not cooperative marketing organizations shall be eligible to vote for nominees. (ii) For the purpose of selecting candidates for nominations, the committee shall hold meetings in two or more districts, including one meeting each in Districts 1 and 2, prior to August 1 of each even-numbered year, or at other times as necessary to fill vacancies. Timely notice of such meetings shall be given by the committee to each eligible producer of record. (iii) Candidates shall be selected at the meetings by submitting their names on a form approved by the committee and signed by at least 10 eligible individuals (growers). Such form shall be used for the purpose of determining the qualifications of a candidate and may provide the opportunity to submit additional background material (such as resumes) as the committee may request. (iv) A person may also become a candidate without attending a candate selection meeting by submitting his or her name on a form approved by the committee, as specified in paragraph (a)(3)(iii) of this section, to the headquarters office of the committee and signed by at least 10 eligible individuals (growers). Such submittal, if mailed, must be postmarked at least 10 days prior to the date of the first of the district meetings held pursuant to paragraph (a)(3)(ii) of this section, and if hand delivered, must be received at least 5 days prior to such date. (v) Persons submitting their names for candidacy shall specify the position (i.e. grower or handler member, alternate, or additional alternate) for which they wish to be nominated. After a position is specified, it may not be changed. Candidates may withdraw by filing a written notice with the committee prior to the date on which the ballots are prepared for mailing to eligible producers. (vi) Following the candidate selection meetings, the committee shall mail to all eligible producers of record a ballot containing the names of the candidates for each available position. At the discretion of the committee, the ballot may include such other information about such candidates as was included on the candidate form specified in paragraph (a)(3)(iii) of this section and as the committee deems appropriate. Separate ballot forms shall be used in voting for handler nominees and producer nominees. A vote may be cast only for those candidates who have been selected according to the procedures set forth herein. (vii) In order to be valid, ballots must be executed in accordance with the instructions set forth on the ballot, and returned to the Secretary's agent at the location and within the time period prescribed. The validity of ballots shall be determined by the Secretary's agent, with such assistance from the committee as may be requested by the agent. (viii) The name of the person receiving the highest total number of votes for a particular handler position shall be submitted to the Secretary as the nominee for such position. The names of the persons receiving the highest and second-highest total number of votes for each of the grower positions shall be submitted to the Secretary as the nominee for such positions.

[19 FR 8130, Dec. 10, 1954, as amended at 21 FR 6636, Sept. 5, 1956. Redesignated at 26 FR 12751, Dec. 30, 1961, and amended at 34 FR 18223, Nov. 14, 1969; 34 FR 19607, Dec. 12, 1969; 36 FR 1878, Feb. 3, 1971; 41 FR 47021, Oct. 27, 1976; 42 FR 49437, Sept. 27, 1977; 50 FR 34078, Aug. 23, 1985]

§ 907.103 Rates of compensation.

(a) Except as provided in paragraph (b) of this section, grower and handler members, alternates, and additional alternates of the committee shall be compensated while in the performance of their duties at a rate of $50 per day. The member and alternate nominated and selected pursuant to § 907.22(f) shall be so compensated at a rate of $100 per day. In addition, all members, alternates, and additional alternates shall receive $50 for each day spent in travel, excluding the day(s) on which duties are being performed.

(b) When grower or handler member, alternate, or additional alternate of the Navel Orange Administrative Committee (NOAC) attends both a meeting of the NOAC and a meeting of the Valencia Orange Administrative Committee (VOAC) under Part 908 on the same day, and when compensation is due from both committees, the NOAC shall pay such member, alternate, or additional alternate $37.50 per day for attending the NOAC meeting and $25 for each day in travel status, excluding the day on which the meeting is held. When the member or alternate nominated and selected pursuant to § 907.22(f) attends both a meeting of the NOAC and the VOAC on the same day, and when compensation is due from both committees, the NOAC shall pay such member or alternate $75 per day for attending the NOAC meeting and $25 for each day in travel, excluding the day(s) on which the meeting is held.

[50 FR 19519, May 9, 1985]

§ 907.104 Selection criteria.

(a) For purposes of this part, the term "cooperative marketing organization" shall mean an association of producers (i.e. growers) that:

(1) Is qualified as a Capper-Volstead cooperative under the provisions of the Act of the Congress of February 18, 1922, known as the "Capper-Volstead Act," (7 U.S.C. 291, 292); and

(2) Markets oranges regulated under this part, or performs handling functions as defined in § 907.10 for the producers thereof.

(b) Pursuant to § 907.23 the Secretary shall select committee members, and their respective alternates and additional alternatives, as follows:

(1) Three growers members who shall be affiliated with the cooperative marketing organization which handled more than 50 percent of the total volume of oranges during the fiscal year in which nominations are made, and two handler members to represent such an organization;

(2) One grower member who shall be affiliated with any of the other cooperative marketing organizations, and one handler member to represent such organizations; and

(3) Two grower members not affiliated with any cooperative marketing organization, and one handler member who is not a member or principal of any cooperative marketing organization to represent all handlers which are not cooperative marketing organizations.

[50 FR 50761, Dec. 12, 1985]

EFFECTIVE DATE NOTE: Section 907.104 was added at 50 FR 50761, Dec. 12, 1985, effective January 13, 1986.

STORAGE OF ORANGES WITHIN PRODUCTION AREA

§ 907.105 Oranges stored within the production area.

Any person who has oranges available for current shipment and controls such oranges within the meaning of § 907.53 may place such oranges in storage within the production area. Thereafter, such person shall, except with respect to oranges stored where prepared for market, report to the committee, on N.O.A.C. Form No. 17, not later than Monday noon of the next calendar week, all oranges so stored.

PRORATE BASES AND ALLOTMENTS

§ 907.108 Prorate bases and allotments.

(a) *Application to be filed.* Each person who has oranges available for current shipment and desires to handle such oranges shall submit to the committee upon request, on N.O.A.C. Form No. 1, an application for a prorate base and allotments. Such application shall contain the information required pursuant to

§ 907.53(b) and a certification to the U.S. Department of Agriculture and the Navel Orange Administration Committee by the handler that the information in the application is true and that he has control, for all purposes relating to this part, of the oranges described in the application. Such application shall be supported by a list of growers, on N.O.A.C. Form No. 1-A, whose oranges the applicant controls for all purposes relating to the marketing order showing for each listed grower's oranges, the name and address of the grower and the location, acreage, tree count, year in which trees were planted for trees less than eight years in the ground, and estimated yield of each grove or portion thereof as may be designated by the committee.

(b) [Reserved]

(c) *Change in control of oranges occasioned by transfer of real property.* In the event a change in control of oranges is occasioned by a bona fide transfer of the ownership of the real property on which such oranges were produced, the person gaining the control shall request the committee to make the adjustment prescribed in § 907.53(e). Such request shall set forth the names of the parties to the transfer, and be accompanied by a legal description of the real property transferred, the name of the county, the book, page number, and date showing that such transfer has been duly recorded. The request shall also set forth the name of the person losing control of the oranges. Upon determination by the committee that the change in control of the oranges has been occasioned by such transfer, the quantity of oranges available for current shipment of the person gaining the control shall be adjusted by adding thereto a quantity of oranges equal to the quantity deducted from the oranges available for current shipment of the person losing control of such oranges. Such quantity shall be added during the same periods in which the deductions are effected in accordance with the provisions of paragraph (d) of this section.

(d) *Loss of control of oranges.* If a person loses control of oranges and has handled a quantity thereof less than the quantity that could have been handled under allotments issued thereon, the quantity of oranges available for current shipment by such person shall be adjusted by deducting therefrom a quantity of oranges equivalent to the quantity upon which allotments were issued, but which were not utilized thereon. The quantity so determined shall be deducted during a period of 4 consecutive weeks in all prorate districts (or during the remainder of the applicable marketing season for the respective prorate district if it is of shorter duration than the designated period): *Provided,* That, insofar as practicable, such deduction for any weekly period shall not exceed the amount which would decrease by one-half the allotment, other than short-life allotment, that otherwise would be issued to such person for such weekly period in the absence of such deduction, and, if necessary to effect this requirement, the applicable period specified in this section for making such deductions may be extended.

(e) *Adjustment of prorate bases.* (1) The prorate bases of handlers shall be adjusted to correct errors, omissions, or inaccuracies, as provided in this part, during a period of 4 consecutive weeks in all prorate districts (or during the remainder of the applicable marketing season for the respective prorate district if it is of shorter duration than the designated period): *Provided,* That, insofar as practicable, such deduction for any weekly period shall not exceed the amount which would decrease by one-half the allotment, other than short-life allotment, that otherwise would be issued to such person for such weekly period in the absence of such deduction, and, if necessary to effect this requirement, the applicable period specified in this section for making such deductions may be extended.

(2) When a handler has moved all of the oranges under his control in a particular district and has received allotment sufficient to repay all loans of allotments received by him under the provisions of § 907.57, such handler shall receive no further allotment for such oranges unless, during the same marketing season, he subsequently

gains control of oranges, in the same district, which he desires to handle and promptly submits a report thereon to the committee in accordance with § 907.53(d).

[19 FR 8130, Dec. 10, 1954, as amended at 21 FR 6636, Sept. 5, 1956. Redesignated at 26 FR 12751, Dec. 30, 1961, and amended at 32 FR 7839, May 30, 1967; 35 FR 18447, Dec. 4, 1970. Redesignated at 34 FR 18223, Nov. 14, 1969; 41 FR 47021, Oct. 27, 1976]

§ 907.110 Equity of marketing opportunity.

Equity of marketing opportunity between prorate districts shall be afforded by the following procedure:

(a) The committee shall establish an equity factor which is the same for all prorate districts. The equity factor shall be stated as a percentage of the tree crop in each district and shall reflect a quantity of oranges (grown in each district) for which there will be equitable marketing opportunity under volume regulation during the ensuing season.

(b) At the marketing policy meeting for each prorate district the committee shall formulate a weekly shipping schedule for the ensuing season reflecting, insofar as practicable, the desire of growers and handlers of oranges within the district as to the quantity of oranges grown in that district to be shipped under volume regulation each week. The quantity of oranges on such schedules shall be computed by application of the equity factor to the tree crop of the district. The seasonal periods covered by such schedules shall be determined by the committee. Prior to any marketing policy meeting for a prorate district the committee may consult with such growers and handlers regarding formulation of such schedule.

(c) Following any or all marketing policy meetings for the districts, the committee may review and make equitable modifications, as it deems advisable in the equity factor and weekly shipping schedules.

(d) The committee shall develop a weekly shipment allocation schedule for each district commencing the week that regulation other than early maturity allotment is first recommended for the district and continuing through the remainder of the season. The quantities of oranges shown for each week shall be the cars appearing on the then effective shipping schedule for that week for the district, plus a proportionate amount of the quantities appearing on such weekly shipping schedule during weeks when no regulation or early maturity allotment was in effect for such district. Whenever two or more districts are shown on such weekly shipment allocation schedule, the committee shall combine into a weekly total the quantity of oranges shown thereon for each week and the weekly quantity for a district shall be converted into a percentage of the said weekly total. The percentage shall be known as the percentage allocation to such district.

(e) Insofar as practicable, the committee shall, pursuant to § 907.51(a), base its weekly recommendations for the allocation of general maturity allotments and of freeze damage allotments among the prorate districts upon the percentage allocations for the districts provided for in § 907.110(d).

(f) The committee shall make such adjustments as it deems advisable in the equity factor, the weekly shipping schedules, and the percentage allocations to prorate districts, so as to reflect changing crop or market conditions. Any such adjustment in the weekly shipping schedule for a prorate district shall be based on the tree crop of handlers in the district who are on the prorate base at the time of adjustment and on the tree crop of all handlers in the district who received short-life allotment. Appropriate adjustments shall be made in the schedules and percentage allocations as soon as possible after a change in the estimated tree crop of any prorate district. Whenever a prorate district nears the end of the shipping schedule for that district and the committee ascertains that oranges (grown in that district) remain for handling under volume regulation, the committee may (1) adjust the equity factor upward with corresponding changes in the weekly shipping schedules for all districts or (2) adjust the weekly shipment allocation schedules for all districts by adding thereto the difference

between the aggregate quantity of oranges listed on the weekly shipment allocation schedule of each district during all of the preceding weeks and the sum of the aggregate quantity of oranges fixed by the Secretary for handling under general maturity and freeze damage allotment.

(g) The committee shall calculate each season, as soon as it is feasible, an estimated percentage of the total tree crop in the production area which, in the judgment of the committee, will be handled under volume regulation and prepare a schedule of estimated weekly shipments based thereon, taking into account the purposes of the act. Such percentage and schedule shall be used as the reference for determining adjustments in the prorate base of handlers, for granting short life allotment, and for matters wherein it is necessary to consider utilization of the crop within a district.

[34 FR 18223, Nov. 14, 1969, as amended at 41 FR 47021, Oct. 27, 1976; 42 FR 13803, Mar. 14, 1977]

§ 907.111 Allotment loans.

(a) Loans arranged by handlers: Loans arranged by handlers shall be subject to the following:

(1) *Payback date.* Each allotment loan agreement entered into by a handler must provide for a payback date specified by the lender. Each loan agreement entered into between handlers in the same district to whom short-life allotments have been issued shall provide for the repayment of the loan during the time the borrowing short-life handler will be issued allotment.

(2) *Ability to repay.* Allotment loan transactions shall be limited to the borrowing handler's calculated ability to make repayment whenever the payback date falls within the scheduled shipping period of the borrowing handler.

(3) *Confirmation.* All allotment loans made on Saturday shall be confirmed as required by § 907.57 but not later than 4:30 p.m. on the following Monday.

(b) Loans arranged by the committee: The committee shall arrange loans for handlers subject to paragraph (a) (1) and (2) of this section and, to the extent practicable, in accordance with the following:

(1) The committee shall give priority, in arranging loans, to those offers which have a payback date within the current scheduled shipping period of borrowing handlers.

(2) Except as otherwise provided in paragraph (b)(5)(iii) of this section, the committee shall consider offers to loan and requests to borrow prior to 12 m. Monday separately from offers and requests received thereafter during the week.

(3) Each handler offering allotment for loan shall specify at least two payback dates. To receive a loan of any such allotment, or portion thereof offered, the payback date specified by the requesting handler must be the same as one of the repayment dates specified by the offering handler.

(4) In arranging loans for handlers to whom short-life allotments have been issued, the committee shall offer such loans first, to other handlers within the same district to whom short-life allotments have been issued; second, to handlers within the same district to whom general maturity allotments have been issued; and third, to handlers in other districts to whom allotments have been issued. All such loans to handlers to whom general maturity allotments have been issued shall provide for a payback date within the scheduled shipping period of the lending short-life handler.

(5) Loan offers and requests received by the committee prior to 12 m. Monday shall be applied first to the arrangement of loans between handlers within the same prorate district in accordance with the following provisions:

(i) If requests from handlers, in a prorate district, for general maturity allotment exceed the quantity offered by handlers in that district, the quantity offered shall be equitably apportioned to each borrowing handler so that the amount he receives bears the same ratio to the total amount received by all borrowing handlers as his tree crop bears to the total tree crop of all borrowing handlers. If the quantity of general maturity allotment offered in any prorate district exceeds the quantity requested in the district,

the same proportion of each offering handler's allotment shall be loaned; and any surplus general maturity allotment from such prorate district shall be equitably apportioned, as aforesaid, to fill requests from borrowing handlers in all other prorate districts.

(ii) If requests from handlers, in a prorate district, for short-life allotment exceed the quantity offered by handlers in that district, the quantity offered shall be equitably apportioned to each borrowing handler so that the amount he receives bears the same ratio to the total amount received by all borrowing handlers as his tree crop bears to the total tree crop of all borrowing handlers. If the quantity of short-life allotment offered in a prorate district exceeds the quantity requested in that district, the same proportion of each lending handler's allotment shall be loaned.

(iii) Such loan offers and requests may be modified or withdrawn any time prior to 12 m. Monday, after which time the committee shall arrange allotment loans on the basis of the offers and requests, including modifications thereof, then pending without further action by the handlers involved. Loan offers and requests not fully utilized in such allotment loan arrangements may be modified or withdrawn.

(6) Offers to loan allotment received by the committee at, or subsequent to, 12 m. Monday shall be applied first to the arrangement of loans to handlers within the same prorate district whose requests were received prior to such time, but had not been completely filled. Any remaining allotment shall then be applied to the arrangement of loans to handlers within that district to fill any requests as thereafter received. Allotment loan offers received from handlers in a prorate district at, or subsequent to, 12 m. Monday and for which there are no requests by handlers in that district, may be applied by the committee to the arrangement of loans to fill requests from handlers in other prorate districts. If the total allotment offered for loan in the same prorate district exceeds total requests in such district, the same proportion of each lending handler's allotment shall be loaned. If the quantity of allotment requested by handlers in a prorate district exceeds the quantity offered, the quantity each borrowing handler receives shall bear the same ratio to the total amount received by all borrowing handlers as his tree crop bears to the total tree crop of all borrowing handlers.

(i) Offers to loan, and requests to borrow, allotment received at, or subsequent to, 12 m. Monday may be modified or withdrawn: *Provided*, That allotment loan arrangements with respect to such offered allotment have not been completed by the committee.

(7) Offers to loan, and requests for, allotment may be made in person, by telephone, or telegram, or in writing. Immediately after completing arrangements for a loan the committee shall confirm the terms thereof by mailing NOAC Form 6 Confirmation of Allotment Loan to the handlers involved.

(c) Whenever any Monday herein specified falls on a legal holiday, the next following business day shall be applicable.

[34 FR 18224, Nov. 14, 1969, as amended at 35 FR 18447, Dec. 4, 1970]

§ 907.112 Assignment of allotment certificates.

In connection with all handling of oranges other than shipments by rail car, each handler at the time of handling of each lot of oranges shall issue to the purchaser or consignee an assignment of allotment certificate covering each quantity of oranges so handled. Such assignment of allotment certificate shall be on N.O.A.C. Form 8 and shall contain the following information: (a) Date oranges delivered; (b) name and address of purchaser or consignee; (c) quantity of oranges in terms of the number of cartons of oranges; (d) prorate district in which such oranges were produced; (e) name and address of the person to whom such oranges were delivered; (f) the license number of the truck transporting such oranges from handler's place of business; (g) the size of the oranges; (h) the date of issue; and (i) the name of the person or firm issuing the assignment of allotment certificate.

Such assignment shall also contain a certification to the United States Department of Agriculture and to the committee as to the truthfulness of the information shown thereon. If the shipment contained oranges not packed in cartons or in bags, the handler shall file with the committee, no later than 10 days following the shipment, information satisfactory to the committee which substantiates, and which shows the derivation of the amount of equivalent cartons, by sizes, contained in the shipment and reported on the assignment of allotment certificate.

[19 FR 8130, Dec. 10, 1954. Redesignated at 26 FR 12751, Dec. 30, 1961, and amended at 32 FR 15806, Nov. 17, 1967; 41 FR 47022, Oct. 27, 1976; 42 FR 49437, Sept. 27, 1977]

§ 907.113 Early maturity allotments.

(a) *Applications to be filed.* On or before 12 o'clock noon of the day preceding the regular weekly meeting day of the committee, or at another time and day which may be prescribed by the committee whenever it determines that its meeting should be on a day other than the regular weekly meeting day or whenever a holiday precedes the meeting day, any handler controlling early maturity oranges who desires to receive allotment therefor for use during the following week must request such allotment from the committee by telephone or telegram, or by an application on N.O.A.C. Form No. 9 delivered to the committee at any of its designated offices. Telephone and telegram requests shall be confirmed either by (1) delivering to the committee not later than the meeting day a duly executed N.O.A.C. Form 9 or (2) by mailing to the committee such N.O.A.C. Form No. 9 postmarked not later than the meeting day. Requests for early maturity allotment, or for changes in requests previously made, shall not be considered by the committee if received subsequent to 12 o'clock noon of the day preceding the regular weekly meeting day of the committee, or if received subseuqent to the time prescribed by the committee whenever the weekly meeting is held other than on the regular meeting day or is preceded by a holiday. Each application, and each confirmation, on N.O.A.C. Form No. 9 shall indicate the name and address of the applicant, the general location of early maturity oranges for which allotment is desired, the number of cartons of allotment desired, and such other pertinent information as the committee may from time to time request.

(b) *Transfer of allotment.* Any handler who transfers early maturity allotment to another handler to whom early maturity allotment is issued must notify the committee of such transfer on or before 12 o'clock noon of the Friday following the week for which such allotment was issued. Unless such notification is received by the committee within the time prescribed the allotment shall be charged to the handler to whom it was issued and failure to ship the allotment shall be the responsibility of such handler. The committee shall confirm all qualifying transfers by memorandum addressed to the parties concerned, which memorandum shall be deemed to satisfy the requirements of this section.

(c) Early maturity allotments shall be allocated to handlers on the basis of requests whenever the committee deems it advisable to grant the full amount of such requests. Whenever the committee deems it inadvisable to grant the full amount of early maturity allotments requested by all handlers, the requests of each handler shall be granted in the same proportion as the handler's tree crop is to the tree crop of all requesting handlers without regard to districts, but not in excess of the amount requested, and any allotment then remaining shall be granted in successive increments, as necessary, to handlers filing requests in the same proportion as aforesaid, but not in excess of the amount requested. District allotments shall be the sum of allotments allocated to handlers within each district as determined according to the foregoing procedure.

[28 FR 22, Jan. 1, 1963, as amended at 31 FR 16184, Dec. 17, 1966; 32 FR 15806, Nov. 17, 1967; 35 FR 18447, Dec. 4, 1970; 41 FR 47022, Oct. 27, 1976; 42 FR 44801, Sept. 7, 1977]

§ 907.114 Short-life allotments.

(a) *Qualification for short-life allotment.* A handler shall be considered to have short-life oranges when he has oranges which historically are known to lack keeping qualities which will permit him to handle, during the normal marketing period for the oranges grown in the prorate district, the same proportion of his oranges as the average which will be handled by all handlers pursuant to § 907.110(g).

(b) *Application to be filed.* Each handler controlling short-life oranges who desires to obtain short-life allotments shall file with the committee, at the time of filing of his application for a Prorate Base and Allotments, an application for such allotment on N.O.A.C. Form No. 10. The application shall contain the following information: Name and address of applicant; location of each grove producing short-life oranges; a record covering the maximum years available, but not in excess of the 10 immediately preceding years, showing the marketing period of the oranges covered by the application; a suggested shortened marketing season showing the final date when the short-life oranges covered by the application should be marketed; and, a showing satisfactory to the committee why the oranges covered by the application cannot be marketed during the normal marketing period for the applicable district through appropriate adjustments in the handler's packinghouse operations.

[19 FR 8130, Dec. 10, 1954. Redesignated at 26 FR 12751, Dec. 30, 1961, and amended at 34 FR 18225, Nov. 14, 1969]

§ 907.116 Credit forfeitures.

(a) The forfeiture of any handler's general maturity allotment that was neither used nor loaned to another handler shall be applied to reduce overshipments of handlers as provided in § 907.55 unless the forfeiting handler made a bona fide and timely offer to the committee to lend his undershipment. An offer shall be considered bona fide and timely if such offer (1) was received in the office of the committee by 12 m. Monday, or the next following business day if Monday is a legal holiday, and (2) contained at least two alternative payback dates. All short-life allotment that is forfeited shall be applied to reduce overshipments of handlers as provided in § 907.55.

(b) If the forfeiture of allotment in a prorate district exceeds that required to offset overshipments in such district and overshipments exceed forfeitures in other districts, the surplus forfeiture credit shall be allocated, as provided in § 907.55, to the handlers in the deficit districts in proportion to their permissible overshipments.

[34 FR 18225, Nov. 14, 1969]

§ 907.117 Freeze damage allotments.

(a) At least 6 days before any meeting held by the committee to consider the quantity of allotments to be issued in any one or more prorate districts pursuant to § 907.61a, the committee shall mail written notice to handlers in such districts of its intention advising handlers that applications for such allotments shall be filed with the committee as hereinafter provided.

(b) Whenever freeze damage allotments are to be issued in a prorate district pursuant to § 907.61a on the basis of requests by handlers, the committee shall determine on the basis of all available information and after consideration of all of the factors enumerated in § 907.51(b), the extent to which freeze damage allotments should be granted in such district.

(c) Any handler who desires to receive freeze damage allotment shall request such allotment in person, or by telephone, telegram, or by filing N.O.A.C. Form No. 35 on or before 12 o'clock noon of the day preceding the regular weekly meeting of the committee, or at another time and day which may be prescribed by the committee whenever it determines that its meeting should be on a day other than the regular weekly meeting day or whenever a holiday precedes the meeting day. Such request may be made at any of the offices of the committee. N.O.A.C. Form No. 35 shall contain (1) the name and address of the handler, (2) the week for which the application is made, (3) the amount of freeze damage allotment requested, and (4) the signature of the handler or authorized representative. All requests

not made by a properly completed N.O.A.C. Form No. 35 shall be confirmed by delivery to the committee at any of the offices, not later than the meeting day, a properly completed N.O.A.C. Form No. 35 or by mailing a properly completed form to the committee not later than the meeting day.

(d) Whenever the total amount of freeze damage allotment the committee determines should be granted to handlers within a prorate district equals or is larger than the total amount applied for in such district, the full amount applied for in each application shall be granted. Whenever the total amount applied for exceeds the total amount of freeze damage allotment the committee deems should be granted in the district, the request of each handler in such district shall be granted in the same proportion as the handler's tree crop bears to the total tree crop of requesting handlers in that district, but not in excess of the amount requested, and any allotment then remaining shall be granted in successive increments, as necessary, to handlers filing requests, in the same proportion as aforesaid, but not in excess of the amount requested.

(e) Any handler to whom freeze damage allotment is issued may transfer such allotment, or portion thereof, to another such handler in the same prorate district; and such handlers shall notify the committee of such transfer on or before 12 m. Friday, or the following business day if Friday is a legal holiday, of the week following the one for which such allotment was issued. Such notification shall show names of the parties, the amount of the allotment transferred, and the week thereof.

(f) Any handler to whom freeze damage allotment is issued and who desires transfer of freeze damage allotment from or to other such handlers within another prorate district shall so notify the committee in person, by telephone, or telegram, or in writing by 12 m. Wednesday of the week for which the allotment was issued, or by 12 m. of the preceding day if Wednesday is a legal holiday. The committee shall endeavor to effect a transfer of allotment and shall confirm each such transfer to the handlers involved. In the event the total amount of the allotment available for transfer is less than the total amount requested, the committee shall transfer the available allotment to the requesting handlers proportionately as provided in paragraph (d) of this section.

[34 FR 18225, Nov. 14, 1969, as amended at 41 FR 47022, Oct. 27, 1976; 42 FR 49437, Sept. 27, 1977]

Exemption Certificates

§ 907.120 Exemptions from size regulation.

(a) *Application to be filed.* Each grower, entitled to be exempted from the provisions of any size regulation established by the Secretary, may file with the committee an application for an exemption certificate on N.O.A.C. Form No. 11. Such application must be received by the committee not later than Wednesday preceding the regular weekly meeting of the committee at which action is to be taken thereon and shall contain the following information: (1) Name and address of applicant; (2) location of oranges which the grower wishes covered by the exemption certificate; (3) the estimated sizes of the oranges contained in the applicant's groves and the percentage of each; (4) the size tests or other facts upon which such estimates are based, showing the number of oranges per tree tested and the total number of oranges tested per acre; (5) the number of boxes of oranges which applicant estimates will be needed to be exempted from size regulation to permit applicant to have handled the equivalent of the average that may be handled on behalf of all growers in the same prorate district; (6) the name of each packinghouse through which the applicant's oranges are to be handled.

(b) *Final dates for filing applications.* The committee may provide final dates for the filing of applications for exemptions from size regulations in each prorate district: *Provided,* That at least two weeks' advance notice shall be given to all handlers of the final date for each prorate district.

(c) *Investigation by Field Department.* Immediately upon receiving an application for an exemption certifi-

cate, the committee shall refer such application to its Field Department for investigation. The Field Department shall conduct an investigation and shall report its findings to the committee at its next regular meeting.

(d) *Determination by the committee.* If the committee determines that the information submitted in the application for an exemption certificate is inadequate, it may require the submission of additional information, including additional size tests. Based on all available information, the committee may authorize the issuance of a size exemption certificate. N.O.A.C. Form No. 12, which will permit the applicants to have as large a proportion of his oranges handled as the average proportion that will be handled for all other producers in the same prorate district. The percentage relation of a grower's restricted sizes to his total tree crop shall be used in determining the extent to which such grower is entitled to exemption from size regulation.

(e) *Exemption certificate.* If volume regulation is in effect at the time exemption certificates are issued, such exemption certificates may be used only to the extent that allotment has been issued under volume regulations for the oranges covered thereby. Exemption may be granted by issuing one or more exemption certificates and the initial certificate may be restricted to 75 percent of the estimated quantity to which a grower is entitled. Upon authorization of the committee, the manager shall issue to growers who have applied therefor, exemption certificates which shall contain the following information: (1) Name and address of person to whom issued; (2) location of grove or groves; (3) quantity of oranges of each size permitted to be handled without regard of existing size regulation; and (4) period covered by the exemption certificate. The exemption certificate shall be issued in quadruplicate, one copy to be retained by the committee, and three copies to be issued to the grower. The grower shall endorse and turn over to the packinghouse, through which the oranges are to be handled, two copies. The packinghouse shall sign and immediately mail one copy to the committee. Exemption certificates issued under this paragraph may be used only for the handling of the oranges covered by the certificate. Each certificate shall be valid at any time during which the size regulation remains in effect and, subject to the handler's allotment under volume regulation, the total quantity of the oranges covered thereby, or any part thereof, may be shipped at one time.

[19 FR 8130, Dec. 10, 1954, as amended at 24 FR 2355, Mar. 26, 1959. Redesignated at 26 FR 12751, Dec. 30, 1961, and amended at 32 FR 15806, Nov. 17, 1967]

Oranges Not Subject to Regulation

§ 907.130 Exemptions under § 907.67.

The exemptions authorized by § 907.67 apply only to oranges handled by the initial handler direct for the purpose stated. Except as specifically provided in this subpart, any transaction wherein the oranges are handled by a third party, such party is not entitled to exemption thereunder.

[41 FR 47022, Oct. 27, 1976]

§ 907.131 By-product oranges.

(a) *Notice to committee.* No person shall handle oranges for commercial processing into by-products unless (1) such oranges are, or have been, handled pursuant to an allotment therefor; or (2) the processor is an approved by-product manufacturer, as prescribed in paragraph (b) of this section.

(b) *Approved by-products manufacturer.* (1) Any person who desires to acquire oranges as an approved by-products manufacturer for commercial processing into by-products exempt from regulation pursuant to § 907.67(b) must first apply to and obtain approval from the committee. Applicants for such exemption shall submit to the committee an application on NOAC Form No. 14 containing the following information: (i) The name and address of applicant; (ii) the proposed type of by-product(s) to be made or derived from oranges; (iii) the approximate quantity of oranges to be used annually; (iv) a description of the by-product(s) to be manufactured and the equipment to be used in manufac-

turing such by-products and the capacity per hour thereof; (v) the intended disposition of unused components of the oranges; (vi) a statement describing the manner in which the by-product(s) will be sold, whether at wholesale, retail, or both; (vii) a statement whether orange juice will be pasteurized and, if so, a description of the manner in which such pasteurization will be accomplished; (viii) the location of the plant(s); (ix) a statement that the exempt oranges acquired hereunder will be used for by-products manufacturing only and will not be resold or disposed of in fresh fruit channels; and (x) an agreement to submit such reports as may be required by the committee.

(2) Such application shall be referred to the committee's Compliance Department for investigation and reported back to the committee. The committee shall approve the application if, in its opinion: (i) The applicant's principal occupation is manufacturing food by-products, including orange by-products, except those applicants providing oranges or by-products for animal feeding purposes; (ii) all orange by-products, including juice, will be sold at wholesale only or will be used for animal feeding; (iii) the applicant agrees to submit such reports as may be required by the committee; (iv) the oranges obtained under this exemption will not be resold or disposed of in fresh fruit channels; and (v) approval of the application will not be contrary to the purposes of this part. If an application is denied, the committee shall within a reasonable time inform the applicant in writing of the facts and reasons therefor, and afford the applicant an opportunity, either orally or in writing, to present opposing facts and reasons. If the application is approved, the applicant's name shall be placed on the list of approved by-products manufacturers. The applicant shall be informed of the committee's determination in a timely manner.

(3) A commercial processor on the list of approved by-products manufacturers who: (i) Fails to commercially process oranges into by-products for a period of one year or more; (ii) sells or otherwise disposes of any orange by-product(s) manufactured from oranges at the retail level other than for animal feeding; (iii) sells or otherwise disposes of oranges obtained under this exemption in fresh fruit channels; (iv) fails or refuses to submit reports required by the committee, may be determined by the committee to be ineligible to acquire oranges under this exemption and the committee may suspend or remove its name from the list of approved by-products manufacturers for such time as the committee deems appropriate in the circumstances. Prior to making such determination the committee shall give the processor reasonable advance notice in writing of its intention, the facts and reasons therefor; and afford the processor an opportunity, either orally or in writing, to present opposing facts and reasons. After a processor's name has been removed from the list of approved by-products manufacturers, it must submit a new application and secure approval of the committee in order to acquire exempt oranges pursuant to § 907.67(b).

(c) *Certificate by by-product manufacturers.* Upon request, each approved by-product manufacturer shall submit to the committee, on forms prescribed by the committee, on or before the 10th day of each month, a report of the Navel oranges used during the preceding calendar month. Each report shall contain a certification to the United States Department of Agriculture and to the committee as to the truthfulness of the information shown therein.

(d) *Orange diversion report.* Each handler shall, with respect to each quantity of oranges he diverts for commercial processing into by-products or to charitable organizations, or eliminates from the channels of human consumption, report to the committee, on N.O.A.C. Form No. 15: (1) Name and address of the by-products plant or charitable organization to which the oranges were diverted; (2) the prorate district in which the oranges were produced; (3) the respective quantities of oranges in terms of the number of cartons (i) diverted to by-products, (ii) diverted to charitable organization, and (iii) eliminated; (4) net weight of such oranges; and (5) if

oranges were eliminated, the place and means of elimination. This report shall be prepared in quadruplicate. One copy signed by the handler shall be submitted to the committee promptly upon the diversion or elimination of the oranges covered thereby. One copy may be retained by the handler, and two copies shall be forwarded by the handler to the by-product manufacturer or charitable organization with the understanding that the by-product manufacturer or charitable organization will record, on one copy thereof, the actual net weight or number of cartons of oranges received, and forward such copy to the committee.

[19 FR 8130, Dec. 10, 1954, as amended at 24 FR 2355, Mar. 26, 1959. Redesignated at 26 FR 12751, Dec. 30, 1961, and amended at 42 FR 49437, Sept. 27, 1977; 46 FR 42839, Aug. 25, 1981]

§ 907.132 Export of oranges.

(a) *Oranges exported.* Except for the handling of oranges to an exporter for export to Mexico as provided in this section, any person who packs oranges and forwards such oranges directly to the destination for export, and who shows proof of export by submitting to the committee a copy of a signed dock receipt, a signed car bill of lading or other documents acceptable to the committee covering the shipment of such oranges to export, no later than 48 hours following such shipment, shall be deemed to have exported such oranges within the meaning of § 907.67.

(b) *Handling oranges to an exporter for export to Mexico.* No person shall be eligible for an exemption under § 907.67 for handling oranges to an exporter for export to Mexico unless the exporter is approved as prescribed in paragraph (c) of this section.

(c) *Approved exporter to Mexico.* Any person who desires to become an approved exporter eligible to handle exempt oranges to Mexico shall submit to the committee an application on N.O.A.C. Form No. 36 which shall contain the following information: (1) The name and home address of the applicant; (2) the applicant's business address; (3) the applicant's permit, identification, or border crossing number; (4) the approximate quantity of oranges to be handled each week for export to Mexico; (5) a certification to the United States and to the Navel Orange Administrative Committee that the oranges obtained for export to Mexico will not be placed in the current of commerce in the Continental United States, Canada, or Alaska; and (6) an agreement that the applicant will deposit with the U.S. Customs Inspector at the Mexican border within 36 hours after handling oranges for export to Mexico by purchase or otherwise, a copy of N.O.A.C. Form No. 16, Certificate of Purchase of Oranges For Export to Mexico, or file such certificate with the committee as provided in paragraph (d) of this section; and based upon information provided in the application, the investigation thereof by the committee and its staff, and other available information, the committee shall approve or disapprove the application and notify the applicant accordingly. If the application is approved, the applicant's name shall be placed on the approved list of exporters to Mexico. Should the applicant at any time fail to abide by the terms of his agreement with the committee, his name shall be removed from the list of approved exporters to Mexico.

(d) *Mexican export certificate.* With respect to each export shipment of oranges to Mexico, the handler shall obtain from the purchaser at time of delivery of such oranges, a certification on N.O.A.C. Form No. 16 to the United States Department of Agriculture and the Navel Orange Administrative Committee that such oranges are to be exported to Mexico and will not re-enter the Continental United States or be reshipped to Canada or Alaska. Such certificate shall state the date of shipment, the quantity of oranges included in such shipment, the truck license number or other identification of the carrier of such oranges, the purchaser's permit, identification, or border crossing number, the name of the packinghouse from which the oranges were purchased, the destination of such oranges, and the signature and address of the purchaser. The certificate shall also be signed by the handler or his authorized repre-

sentative and the original shall be forwarded by the handler to the committee at the close of each day's business. The duplicate and triplicate copy shall accompany such oranges, and within 36 hours of the time they were purchased, the purchaser shall deposit the duplicate copy with the U.S. Customs Inspector at the Mexican Border, or, in lieu thereof, shall mail the duplicate copy to the committee in an envelope mailed from Mexico.

[41 FR 47022, Oct. 27, 1976]

§ 907.133 Other exemptions.

(a) Any producer whose principal occupation is not that of food distribution may apply to the committee on its N.O.A.C. Form No. 18 for an exemption to sell oranges produced by him direct to consumers without regard to volume or size regulation. Such application shall show: (1) The name and address of the producer; (2) the location of the producer's grove, the acreage in such grove, and the estimated production thereon; (3) the estimated quantity of oranges which producer desires to sell to consumers under the exemption; (4) the location at which producer will sell his oranges to consumers, and the name of the facility employed therein, if any; (5) the name of the person or persons who will sell the oranges, and, if the oranges are to be sold by a person other than the applicant, the nature of the selling agreement between such person and the applicant including information as to the extent to which applicant has control over the sale of the oranges; and (6) evidence that his principal occupation is not that of food distribution. The committee shall determine the extent to which the application should be granted on the basis of its evaluation of the information provided therein, other available information, and its judgment as to the manner in which granting the application will effect the purposes of the marketing order. In making such determination, the committee shall consider: (i) The extent to which other handlers will be adversely affected in the marketing of their oranges in regular channels, if the exemption is granted; and (ii) the degree of risk that the oranges covered by the exemption will re-enter non-exempted channels of trade, if the exemption is granted. The producer shall be notified in writing of the action taken by the committee on his application. Upon approval of the application, the producer may sell oranges produced by him direct to a consumer without regard to the restrictions of volume or size prescribed pursuant to Order No. 907. This exemption shall not apply to sales of oranges made at a packinghouse.

(b) Such oranges as are prepared for market by the model packing plant at the National Orange Show, San Bernardino, California, may be handled by the National Orange Show pursuant to § 907.67 if the committee issues assignment of allotment certificates thereon.

(c) Any handler who desires to furnish, at his own expense, oranges for gifts, exhibits, or for experimental or research work by a university or other similar research institution, which does not involve the sale of such oranges in fresh fruit channels, may do so without regard to volume and size regulations then in effect. Any such oranges shall be reported to the committee on N.O.A.C. Form No. 4, Report of Weekly Orange Movement, and shall show the quantity of oranges furnished, and the name and address of the university or other research institution.

[19 FR 8130, Dec. 10, 1954, amended at 25 FR 11204, Nov. 26, 1960. Redesignated at 26 FR 12751, Dec. 30, 1961, and amended at 41 FR 47023, Oct. 27, 1976]

§ 907.139 Conversion factors.

Unless otherwise specified in the particular report form, information with respect to volume of oranges required to be submitted under this part shall be reported in terms of cartons. For shipments of oranges, other than in cartons, the volume of such oranges shall be converted to cartons on the basis of 37½ pounds net weight per carton: *Provided,* That the following conversion factors may be used:

(a) One standard 2-compartment California wood box, loose packed, equals 1.6 cartons.

(b) Twenty 2-lb. bags equals 1 carton.

(c) Thirteen 3-lb. bags equals 1 carton.

(d) Ten 4-lb. bags equals 1 carton.

(e) Eight 5-lb. bags equals 1 carton.

(f) Seven 6-lb. bags equals 1 carton.

(g) Six 7-lb. bags equals 1 carton.

(h) Five 8-lb. bags equals 1 carton.

[26 FR 11851, Dec. 12, 1961. Redesignated at 26 FR 12751, Dec. 30, 1961, and amended at 34 FR 18225, Nov. 14, 1969]

§ 907.140 Weekly reports.

Weekly reports on N.O.A.C. Form No. 4 shall be submitted by all handlers to the committee each Friday, and shall contain the information as is set forth in § 907.70, and shall include the name of the boat used in connection with export shipments.

[19 FR 8130, Dec. 10, 1954. Redesignated at 26 FR 12751, Dec. 30, 1961, and amended at 32 FR 15808, Nov. 17, 1967]

§ 907.141 Manifest reports.

Within 24 hours after shipment is made by a handler, he shall submit to the committee, on N.O.A.C. Form No. 3, a manifest report of all oranges so shipped. Such report shall show the rail car number or the serial number of the Certificate of Assignment of Allotment for each shipment, together with the quantity by sizes per carton, of each shipment made within the United States or to Canada, or to Alaska. If the shipment was made under a size regulation and was covered by an exemption certificate, the certificate number shall also be shown. All manifest reports shall be certified by the handler to the United States Department of Agriculture and to Navel Orange Administrative Committee as to the correctness of the information shown thereon. If the shipment was by rail and contained oranges not packed in cartons or in bags, the handler shall file with the committee, no later than 10 days following the shipment, information satisfactory to the committee which substantiates, and which shows the derivation of the amount of equivalent cartons, by sizes, contained in the shipment and reported on the manifest report.

[19 FR 8130, Dec. 10, 1954, as amended at 24 FR 2355, Mar. 26, 1959. Redesignated at 26 FR 12751, Dec. 30, 1961, and amended at 41 FR 47023, Oct. 27, 1976; 42 FR 49437, Sept. 27, 1977]

§ 907.142 Other reports.

(a) Each handler shall make available to the committee's field department representative, upon request, information as to the quantity of oranges which has been harvested from all groves or portions thereof under such handler's control.

(b) Upon request, each handler shall submit to the committee a completed N.O.A.C. Form No. 29—Inventory Report of Navel Oranges Controlled showing therein: The specified inventory date; variety; field boxes of oranges picked to date; estimated number of field boxes remaining to be picked; field boxes of oranges in the packinghouse; cartons of oranges loaded on trucks and rail cars for Friday shipment; number of cartons of oranges in storage; number of cartons of oranges on the packinghouse floor; loose oranges on hand (converted to cartons); oranges on hand for products (converted to cartons); and the date when the handler plans to complete his orange picking operations. The report shall be signed by the handler or by his authorized representative.

[32 FR 7840, May 30, 1967, as amended at 32 FR 15808, Nov. 17, 1967; 42 FR 49437, Sept. 27, 1977]

§ 907.166 Change in definition of District 1 and establishment of a new District 4.

(a) District 1 shall include that part of the State of California which is south of the 38th Parallel and north of a line drawn due east and west through the present post office in Gorman, California, and west of the extension of a line drawn due north and south through the present post office in White Water, California, but excluding San Luis Obispo and Santa Barbara Counties.

(b) District 4 shall include that part of the State of California which is north of the 38th Parallel and south of a line drawn due east and west through the present post office in Red Bluff, California.

[44 FR 48645, Aug. 20, 1979]

NOTE: After January 1, 1979, "Budget of Expenses and Rate of Assessment" regulations (e.g. sections .200 through .299) and "Handling" regulations (e.g. sections .300 through .999) which are in effect for a year or less, will not be carried in the Code of Federal Regulations. For FEDERAL REGISTER citations affecting these regulations, see the "List of CFR Sections Affected" in this volume.

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AUTHORITY: Secs. 1-19, 48 Stat. 31, as amended; 7 U.S.C. 601-674.

Subpart—Order Regulating Handling

SOURCE: 19 FR 1742, Mar. 31, 1954, unless otherwise noted. Redesignated at 26 FR 12751, Dec. 30, 1961.

DEFINITIONS

§ 908.1 Secretary.

"Secretary" means the Secretary of Agriculture of the United States or any officer or employee of the United States Department of Agriculture who is, or who may hereafter be authorized to exercise the powers and perform the duties of the Secretary of Agriculture of the United States.

§ 908.2 Act.

"Act" means Public Act No. 10, 73d Congress (May 12, 1933), as amended and as reenacted and amended by the Agricultural Marketing Agreement Act of 1937, as amended (48 Stat. 31, as amended; 7 U.S.C. 601 et seq.; 68 Stat. 906, 1047).

[19 FR 1742, Mar. 31, 1954, as amended at 21 FR 4393, June 22, 1956. Redesignated at 26 FR 12751, Dec. 30, 1961]

§ 908.3 Person.

"Person" means any individual, partnership, corporation, association, or any other business unit.

§ 908.4 Production area.

"Production area" means the State of Arizona and that part of the State of California south of a line drawn due east and west through the post office in Turlock, California.

[27 FR 10089, Oct. 13, 1962]

§ 908.5 Oranges.

"Oranges" means any and all strains of the Valencia variety of oranges grown in the production area.

§ 908.6 Fiscal year.

"Fiscal year" means the twelve-month period ending October 31 of each year: *Provided, however,* That the initial fiscal year shall begin with the effective date of this part and end October 31, 1954.

§ 908.7 Marketing year.

"Marketing year" means the twelve-month period ending January 31 of each year.

§ 908.8 Committee.

"Committee" means the Valencia Orange Administrative Committee established pursuant to § 908.20.

§ 908.9 Grower.

"Grower" and "producer" are synonymous and mean any person who produces oranges for market.

§ 908.10 Handler.

"Handler" means any person who handles oranges.

§ 908.11 Handle.

"Handle" means to buy, sell, consign, transport, or ship oranges (except as a common or contract carrier of oranges owned by another person), or in any other way to place oranges in the current of commerce, between the State of California and any point outside thereof in the continental United States or Canada, or within the State of California, or between the State of Arizona and any point outside thereof in the continental United States or Canada, or within the State of Arizona. The term "handle" does not include (a) the sale of oranges on the tree; (b) the trans-

portation of oranges to a packinghouse for the purpose of having such oranges prepared for market and such preparation for market; (c) the transportation of oranges for storage within the production area under such rules and regulations as the committee, with the approval of the Secretary, may prescribe; or (d) the sale of oranges at retail by a person in his capacity as such retailer.

[19 FR 1742, Mar. 31, 1954. Redesignated at 26 FR 12751, Dec.30, 1961, and amneded at 50 FR 1434, Jan. 11, 1985]

§ 908.12 Oranges available for current shipment.

"Oranges available for current shipment" means all oranges as measured by the tree crop.

§ 908.13 Tree crop.

"Tree crop" means the total quantity of oranges on the trees as determined by the committee.

§ 908.14 Early maturity oranges.

"Early maturity oranges" means any oranges that have reached maturity, as measured by applicable State laws, in advance of general maturity in the same prorate district.

§ 908.15 General maturity.

"General maturity" shall have been reached in any prorate district at such time as the committee determines that allotment shall be distributed to all handlers in such prorate district.

§ 908.16 Carton.

"Carton" means the standard container number 58 as defined in section 828.83 of the Agricultural Code of California, as amended, of a capacity of approximately 38½ pounds of oranges, or such other container and capacity as may be established by the committee with the approval of the Secretary, or the equivalent thereof.

[21 FR 4392, June 22, 1956. Redesignated at 26 FR 12751, Dec. 30, 1961]

§ 908.17 Central marketing organization.

"Central marketing organization" means any organization which markets oranges for more than one handler pursuant to a written contract between such organization and each such handler.

§ 908.18 Carload.

"Carload" means a quantity of oranges equivalent to 1,000 cartons of oranges, or such other quantity of oranges, as may be established by the committee with the approval of the Secretary.

[50 FR 1434, Jan. 11, 1985]

§ 908.19 Export.

"Export" means shipments of oranges to points outside the continental United States and Canada.

[50 FR 1434, Jan. 11, 1985]

Administrative Body

§ 908.20 Establishment and membership.

There is hereby established a Valencia Orange Administrative Committee consisting of 11 members, for each of whom there shall be one alternate, and for each grower and handler member an additional alternate. Six of the members and their respective alternates shall be growers. Four of the members and their respective alternates shall be handlers, or employees of handlers, or employees of central marketing organizations. One member of the committee and an alternate of such member shall be selected as provided in § 908.22(f). The six members of the committee who shall be growers are referred to in this part as "grower" members of the committee and the four members who shall be handlers, or employees of handlers, or employees of central marketing organizations are referred to in this part as "handler" members of the committee.

[50 FR 1434, Jan. 11, 1985]

§ 908.21 Term of office.

The term of office of each member and alternate member of the committee shall be for a period of two years, and such terms shall begin on February 1 of each even-numbered year: *Provided*, That such members and alternates shall serve in such capacities for the portion of the term of office for which they are selected and qual-

ify and until their respective successors are selected and have qualified.

[50 FR 1435, Jan. 11, 1985]

§ 908.22 Nominations.

(a) The time and manner of nominating members, alternate members, and additional alternate members of the committee shall be prescribed by the Secretary.

(b) Any cooperative marketing organization, or the growers affiliated therewith, which handled more than 50 percent of the total volume of oranges handled in fresh domestic channels, including Canada, during the marketing year in which nominations for members and alternate members of the committee are submitted shall nominate three grower members, three alternate grower members, three additional alternate grower members, two handler members, two alternate handler members and two additional alternate handler members of the committee.

(c) All cooperative marketing organizations which are not qualified under paragraph (b) of this section, or the growers affiliated therewith, shall nominate one grower member, one alternate grower member, one additional alternate grower member, one handler member, one alternate handler member, and one additional alternate handler member.

(d) All growers which are not qualified under paragraphs (b) and (c) of this section shall nominate two grower members, two alternate grower members, two additional alternate grower members, one handler member, one alternate handler member, and one additional alternate handler member of the committee.

(e) When voting for nominees, each grower shall be entitled to cast one vote which shall be cast on behalf of such grower, the grower's agents, subsidiaries, affiliates, and representatives. The votes of cooperative marketing organizations voting pursuant to paragraph (c) of this section shall be weighted in accordance with the volume of oranges handled during the marketing year in which such nominations are made.

(f) The members of the committee selected by the Secretary pursuant to § 908.23 shall meet on a date designated by the Secretary and, by a concurring vote of at least six members, shall nominate a member and an alternate member of the committee, which persons shall not be growers or handlers, or employees, agents, or representatives of a grower or handler (other than a charitable or educational institution which is a grower or handler), or of a central marketing organization.

(g) Grower and handler member, alternate member and additional alternate member positions may be allocated pursuant to § 908.29(n) of this part.

[19 FR 1742, Mar. 31, 1954. Redesignated at 26 FR 12751, Dec. 30, 1961, and amended at 33 FR 19828, Dec. 27, 1968; 50 FR 1435, Jan. 11, 1985]

§ 908.23 Selection.

From the nominations made pursuant to § 908.22(b) or from other qualified growers and handlers, the Secretary shall select three grower members and two handler members of the committee, and an alternate and an additional alternate to each such member. From the nominations made pursuant to § 908.22(c) or from other qualified growers and handlers, the Secretary shall select one grower member and one handler member of the committee, an alternate and an additional alternate to each such member. From the nominations made pursuant to § 908.22(d) or from other qualified growers and handlers, the Secretary shall select two grower members and one handler member of the committee, an alternate and an additional alternate to each such member. From the nominations made pursuant to § 908.22(f) or from other qualified persons, the Secretary shall select one member of the committee and an alternate to such member.

[50 FR 1435, Jan. 11, 1985]

§ 908.24 Failure to nominate.

If nominations are not made within the time and in the manner specified by the Secretary pursuant to § 908.22(a), the Secretary may, without regard to nominations, select the members and alternate members of the committee on the basis of the representation provided for in § 908.23.

§ 908.25 Acceptance.

Any person selected by the Secretary as a member or as an alternate member of the committee shall qualify by filing a written acceptance with the Secretary within ten days after being notified of such selection.

§ 908.26 Vacancies.

To fill any vacancy occasioned by the failure of any person selected as a member or as an alternate member of the committee to qualify or in the event of death, removal, resignation, or disqualification of any member or alternate member of the committee, a successor to the unexpired term of such member or alternate member of the committee shall be selected by the Secretary from nominations made in the manner specified in § 908.22 or from other qualified persons. If the names of nominees to fill any such vacancy are not made available to the Secretary within fifteen days after such vacancy occurs the Secretary may fill such vacancy without regard to nominations, which selection shall be made on the basis of representation provided for in § 908.23.

§ 908.27 Alternate members.

An alternate member of the committee, during the absence or at the request of the member for whom he is an alternate, shall act in the place and stead of such member: *Provided,* That a member may designate any alternate member to serve in the place and stead of such member, if the alternate member so designated was selected from the same group which was authorized to nominate the member; unless another alternate member is so designated by a grower member, his alternate shall act for the member and, in the absence of such alternate, the alternate shall so act, and in his absence, the additional alternate shall so act. In the event of the death, removal, resignation, or disqualification of a member, his alternate shall act for him until a successor for such member is selected and has qualified.

[19 FR 1742, Mar. 31, 1954. Redesignated at 26 FR 12751, Dec. 30, 1961, and amended at 33 FR 19830, Dec. 27, 1968]

§ 908.28 Powers.

The Committee shall have the following powers:

(a) To administer the provisions of this part in accordance with its terms;

(b) To make and adopt rules and regulations to effectuate the terms and provisions of this part;

(c) To receive, investigate, and report to the Secretary complaints of violations of the provisions of this part; and

(d) To recommend to the Secretary amendments to this part.

§ 908.29 Duties.

The committee shall have the following duties:

(a) To select a chairman and such other officers as may be necessary, and to define the duties of such officers;

(b) To appoint such employees, agents, and representatives as it may deem necessary, and to determine the compensation and to define the duties of each;

(c) To submit to the Secretary at the beginning of each fiscal year a budget for such fiscal year, including a report in explanation of the items appearing therein and a recommendation as to the rate of assessment for such fiscal year;

(d) To keep minutes, books, and records which will reflect all of the acts and transactions of the committee and which shall be subject to examination by the Secretary;

(e) To prepare a monthly statement of the financial operations of the committee and to make copies of each such statement available to growers and handlers for examination at the office of the committee;

(f) To cause its books to be audited by a certified public accountant at least once each fiscal year, and at such other times as the Secretary may request;

(g) To act as intermediary between the Secretary and any grower or handler;

(h) To provide an adequate system for determining the total quantity of oranges available for current shipment, and to make such determinations, including determinations by

grade, size, and maturity conditions, as it may deem necessary, or as may be prescribed by the Secretary, in connection with the administration of this part;

(i) To investigate the growing, handling, and marketing conditions with respect to oranges, and to assemble data in connection therewith;

(j) To submit to the Secretary such available information, including verified reports, as he may request;

(k) To notify producers and handlers of meetings of the committee to consider recommendations for regulation;

(l) To consult with such representatives of growers or groups of growers as may be deemed necessary and to pay the travel expenses incurred by such representatives in attending committee meetings at the request of the committee: *Provided,* That the committee shall not pay the travel expenses of more than three such representatives in connection with any one meeting of the committee;

(m) To investigate compliance with the provisions of this part; and

(n) With the approval of the Secretary, to reapportion the number of grower members or handler members on the Valencia Orange Administrative Committee who are nominated pursuant to § 908.22 (c) and (d). Any such changes shall be based, insofar as practicable, upon the proportionate amount of Valencia oranges handled by the respective types of marketing organizations, provided that each of the grower groups described in § 908.22 (c) and (d) shall be entitled to nominate at least one grower and one handler member together with their respective alternates.

§ 908.30 Procedure.

(a) A majority of the committee shall constitute a quorum; and any action of the committee shall require at least six concurring votes.

(b) The committee may vote by telegraph, telephone, or other means of communication; and any votes so cast shall be confirmed promptly in writing: *Provided,* That if an assembled meeting is held, all votes shall be cast in person.

§ 908.31 Expenses and compensation.

The members and alternates of the committee shall be reimbursed for expenses necessarily incurred by them in the performance of their duties under this part. Members and alternates shall receive compensation at a rate to be recommended by the committee and approved by the Secretary which rate shall not exceed $100 per day or portion thereof spent in performing such duties. The member and alternate nominated and selected pursuant to § 908.22(f) shall receive compensation at a rate to be recommended by the committee and approved by the Secretary which rate may be greater than $100, but shall not exceed $250 per day or portion thereof spent in performing such duties.

[50 FR 1435, Jan. 11, 1985]

§ 908.32 Annual review and meeting.

The committee shall, as soon as practicable after the marketing of the crop is completed, prepare and mail an annual report to the Secretary and to each handler and grower of record. This annual report shall contain at least: (a) A complete review, by prorate districts, of the regulatory operations during the marketing year, as conducted under the marketing policy established pursuant to § 908.50(a); (b) an appraisal of the effect of such regulatory operations upon the competitive status of the Valencia orange industry; (c) recommendations for changes in the program; and (d) notice of the time and place of an open meeting, to be held as soon as practicable after the mailing of the annual report, to review the whole record of the operations of this part.

[19 FR 1742, Mar. 31, 1954, as amended at 21 FR 4393, June 22, 1956. Redesignated at 26 FR 12751, Dec. 30, 1961]

§ 908.33 Research and development.

The committee, with the approval of the Secretary, may establish or provide for the establishment of marketing research and development projects designed to assist, improve, or promote the marketing, distribution, and consumption of Valencia oranges, the ex-

pense of such projects to be paid from funds collected pursuant to this part.

[27 FR 10089, Oct. 13, 1962]

§ 908.34 Consumer affairs advisors.

The committee may appoint such consumer affairs advisors as it deems appropriate and determine the compensation and define the duties of such advisors.

[50 FR 1435, Jan. 11, 1985]

Expenses and Assessments

§ 908.40 Expenses.

The Valencia Orange Administrative Committee is authorized to incur such expenses as the Secretary finds are reasonable and likely to be incurred to carry out the functions of the committee under this subpart during each fiscal year.

[35 FR 16625, Oct. 27, 1970]

§ 908.41 Assessments.

(a) Each person who first handles oranges shall, with respect to the oranges handled by him, pay to the committee upon demand, such person's pro rata share of the expenses which the Secretary finds are reasonable and likely to be incurred each fiscal year. Each such person's share of such expenses shall be equal to the ratio between the total quantity of such oranges handled by him as the first handler thereof during the applicable fiscal year, and the total quantity of such oranges so handled by all persons during the same fiscal year. The payment of assessments for the maintenance and functioning of the committee may be required under this part throughout the period it is in effect irrespective of whether particular provisions thereof are suspended or become inoperative.

(b) The Secretary shall fix the rate of assessment to be paid by each such person. At any time during or after the fiscal year, the Secretary may increase the rate of assessment in order to secure sufficient funds to cover any later finding by the Secretary relative to the expense which may be incurred. Such increase shall be applied to all oranges handled during the applicable fiscal year. In order to provide funds for the administration of the provisions of this part, the committee may accept the payment of assessments in advance, and may borrow money in any amount not to exceed 10 percent of the estimated expenses set forth in its budget for the then current fiscal year.

(c) The committee may, with the approval of the Secretary, maintain a suit in its own name, or in the names of its members, to enforce the payment of assessments levied under this section.

(d) Assessments not paid within a time prescribed by the committee may be made subject to interest or late payment charges, or both. The period of time, rate of interest, and late payment charge will be as recommended by the committee and approved by the Secretary: *Provided*, That when interest or late payment charges are in effect, they shall be applied to all assessments not paid within the prescribed period of time.

[19 FR 1742, Mar. 31, 1954. Redesignated at 26 FR 12751, Dec. 30, 1961, and amended at 35 FR 16625, Oct. 27, 1970; 50 FR 1435, Jan. 11, 1985]

§ 908.42 Accounting.

(a) If, at the end of a fiscal year, the assessments collected are in excess of expenses incurred, such excess shall be accounted for in accordance with one of the following:

(1) If such excess is not retained in a reserve or used to defray necessary expenses of liquidation, as provided in paragraph (a)(2) of this section, it shall be refunded proportionately to the persons from whom it was collected: *Provided*, That any sum paid by a person in excess of his pro rata share of the expenses during any fiscal year may be applied by the committee at the end of such fiscal year to any outstanding obligations due the committee from such person.

(2) The committee, with the approval of the Secretary, may establish and maintain during one or more fiscal years an operational monetary reserve in an amount not to exceed approximately one half of a fiscal year's operational expenses. Upon approval of the Secretary, funds in such reserve

shall be available for use by the committee (i) for all expenses authorized pursuant to § 908.40 and (ii) to cover necessary expenses of liquidation in the event of termination of this part. Upon termination of this part, any funds not required to defray the necessary expenses of liquidation shall be disposed of in such manner as the Secretary may determine to be appropriate: *Provided,* That to the extent practical, such funds shall be returned pro rata to the persons from whom such funds were collected.

(b) All funds received by the committee pursuant to the provisions of this subpart shall be used solely for the purposes specified in this part, and shall be accounted for in the manner provided in this part. The Secretary may, at any time, require the committee and its members to account for all receipts and disbursements.

[19 FR 1742, Mar. 31, 1954. Redesignated at 26 FR 12751, Dec. 30, 1961, and amended at 33 FR 19830, Dec. 27, 1968]

REGULATION

§ 908.50 Marketing policy.

(a) Prior to the recommendation for regulation for each prorate district, the committee shall submit to the Secretary its marketing policy for the ensuing season. Such marketing policy shall contain the following information: (1) The available crop of oranges in the prorate district, including estimated quality and composition of sizes; (2) the estimated utilization of the crop, showing the quantity and percentages of the crop that will be marketed in domestic, export, and by-product channels, together with quantities otherwise to be disposed of; (3) a schedule of estimated weekly shipments to be recommended to the Secretary during the ensuing season; (4) available supplies of competitive oranges in all producing areas of the United States; (5) level and trend of consumer income; (6) estimated supplies of competitive citrus commodities; and (7) any other pertinent factors bearing on the marketing of oranges. In formulating its marketing policy the committee should give due consideration to the onset and duration of prorate and size regulation. In the event that it becomes advisable substantially to modify such marketing policy, the committee shall submit to the Secretary a revised marketing policy setting forth the information as required in this paragraph.

(b) All meetings of the committee held for the purpose of formulating such marketing policies shall be open to growers and handlers. The committee shall give notice to growers by publication of notice of such meetings in such newspapers as they deem appropriate and shall advise all handlers by mail of such meetings.

(c) The committee shall transmit a copy of each marketing policy report or revision thereof to the Secretary and to each grower and handler who files a request therefor. Copies of all such reports shall be maintained in the office of the committee where they shall be available for examination by growers and handlers.

§ 908.51 Recommendations for volume regulation.

(a) The committee may recommend to the Secretary the total quantity of oranges which it deems advisable to be handled during the next succeeding week in each prorate district. If, for any reason, the committee recommends the issuance of volume regulation but fails to recommend to the Secretary the total quantity of oranges which it deems advisable to be handled during the next succeeding week in each prorate district, views of the committee members with respect to its failure to act shall be submitted promptly to the Secretary.

(b) In making its recommendation, the committee shall provide equity of marketing opportunity to handlers in all districts and shall give due consideration to the following factors: (1) Market prices for oranges, including market prices by grades and sizes; (2) supply of oranges on track at, and en route to, the principal markets; (3) supply, maturity, and condition of oranges in the area of production, including the grade and size composition thereof; (4) market prices and supplies of citrus fruits from California, Arizona, and competitive producing areas, and supplies of other competitive

fruits; (5) trend and level in consumer income; and (6) other relevant factors.

(c) At any time prior to or during a week for which the Secretary, pursuant to § 908.52, has fixed the quantity of oranges which may be handled, the committee may, if such action is deemed advisable, recommend to the Secretary that such quantity be increased for such week. Any such recommendation, together with the committee's reasons for such recommendation, shall be submitted promptly to the Secretary.

(d) The committee shall, with the approval of the Secretary, adopt procedural rules and regulations to effectuate the provisions of this § 908.51.

[19 FR 1742, Mar. 31, 1954. Redesignated at 26 FR 12751, Dec. 30, 1961, and amended at 33 FR 19830, Dec. 27, 1968; 50 FR 1435, Jan. 11, 1985]

§ 908.52 Issuance of volume regulation.

Whenever the Secretary shall find, from the recommendations and information submitted by the committee, or from other available information, that to limit the quantity of oranges which may be handled in each prorate district during a specified week will tend to effectuate the declared policy of the act, the Secretary shall fix such quantity. Such regulation may be made effective, as authorized by the act, irrespective of whether the season average price for Valencia oranges is in excess of the parity price specified therefor in the act. The quantity so fixed may be increased by the Secretary at any time prior to or during such week.

[50 FR 1435, Jan. 11, 1985]

§ 908.53 Prorate bases.

(a) Each person who has oranges available for current shipment and who desires to handle such oranges, shall submit to the committee, at such time and in such manner as may be designated by the committee, and upon forms made available by it, a written application for a prorate base and for allotments as provided in this part.

(b) Such application shall be substantiated in such manner and shall be supported by such evidence as the committee may require, and shall include at least (1) the name and address of the producer or duly authorized agent, if any, for each grove or portion thereof, the fruit of which is included in the quantity of oranges available for current shipment by the applicant; (2) an accurate description of the location of each such grove or portion thereof, including the number of acres contained therein; (3) an estimate of the total quantity of oranges availabe for current shipment in terms of a unit of measure designated by the committee, contained in each grove or portion thereof described in paragraph (b)(2) of this section; and (4) an estimate of the total quantity of oranges available for current shipment by the applicant in terms of a unit of measure designated by the committee. If at the time of filing of an application under this section the commiteee finds that there is an error, omisssion, inaccuracy or inadequacy in such application, or that any estimates contained in such application are not reasonably calculated to apprise the committee of the information required by this section, it shall return the application to the applicant for correction or completion. Applicants may resubmit applications to the committee for its consideration at any subsequent time.

(c) Each application shall include a certification by the handler that the handler has control, for all purposes relating to this part, of the oranges described in the application.

(d) If the quantity of oranges available for current shipment by any person is increased or decreased by the acquisition or loss of the control required by paragraph (c) of this section, such person shall submit promptly a report thereon to the committee upon forms made available by it, which report shall be verified in such manner as the committee may require.

(e) If any person gains or loses the control of oranges required by paragraph (c) of this section, there shall be a corresponding increase or decrease in the quantity of oranges available for current shipment by such person. If it is determined by the committee that any person who has lost the control of oranges required by paragraph (c) of this section has handled a quan-

tity of such oranges less than the quantity that could have been handled under the allotments issued thereon, the quantity of oranges available for current shipment by such person shall be adjusted by deducting therefrom, over such period as may be determined by the committee, a quantity of oranges equivalent to the quantity upon which allotments were issued but which were not utilized thereon; and, in the event the change in control of oranges is occasioned by a bona fide transfer of the ownership of the real property on which such oranges were produced, the person gaining the control of such oranges shall have his quantity of oranges available for current shipment adjusted by adding thereto a quantity of oranges equal to that which is so deducted.

(f) When any person having a prorate base has remaining a quantity smaller than such person's allotment, such person shall be removed from the prorate base or that prorate base shall be reduced so that the allotment based thereon shall not exceed the quantity of oranges remaining under such handler's control; *Provided*, That such handler shall receive due allotment to the extent necessary to pay back loans which the handler is obligated to repay in any week that repayment of loans may be due.

(g) The committee shall determine the accuracy of the information submitted pursuant to this section. Except as provided in (b) of this section, whenever the committee finds that there is an error, omission, inaccuracy, or inadequacy in any such information, it shall correct the same after granting the person who submitted such report a reasonable opportunity to discuss with the committee the factors considered in making the correction. If it is determined that an error, omission, inaccuracy, or inadequacy has resulted in the establishment of a smaller or a larger quantity of oranges available for current shipment than that to which a person was entitled under this part, such quantity shall be increased or decreased, over such period as may be determined by the committee, by an amount necessary to correct the error, omission, inaccuracy or inadequacy.

(h) During any week when volume regulation is likely to be recommended, the committee shall compute, with respect to each prorate district, the total quantity of oranges available for current shipment by each person who has applied for a prorate base and for allotments, except as provided in paragraph (b) of this section. On the basis of such computation, the committee shall fix a prorate base for each person who is entitled thereto. Such prorate base shall represent the ratio between the total quantity of oranges available for current shipment in the particular prorate district by each applicant and the total quantity of oranges available for current shipment in such district by all such applicants. The committee shall notify the Secretary of the prorate base fixed for each person and shall notify each such person of the prorate base so fixed.

(i) The committee shall, with the approval of the Secretary, adopt procedural rules and regulations to effectuate the provisions of this § 908.53.

[19 FR 1742, Mar. 31, 1954, as amended at 21 FR 4393, June 22, 1956. Redesignated at 26 FR 12751, Dec. 30, 1961, and amended at 33 FR 19830, Dec. 27, 1968; 35 FR 16625, Oct. 27, 1970; 50 FR 1436, Jan. 11, 1985]

§ 908.54 Allotments.

(a) *General maturity allotments.* Whenever the Secretary has fixed the quantity of oranges which may be handled during any week in a prorate district, the committee shall calculate the quantity of oranges which may be handled by each person during such week. The said quantity shall be the allotment of such person and shall be in an amount equivalent to the product of the prorate base of such person and the total quantity of oranges grown in such prorate district and fixed by the Secretary as the total quantity of oranges which may be handled during such week. The committee shall give reasonable notice to each person of the allotment computed for such person pursuant to this part.

(b) *Marketing incentive allotments.* During any week in which volume regulation is in effect, any handler may handle, in addition to other allotment,

an amount of oranges equivalent to 10 percent of the handler's weekly allotment in each of three separate weeks and at such other times and in such other amounts as may be recommended by the committee and approved by the Secretary. Use of marketing incentive allotment may be made by the handler upon prior notification to the committee. This incentive increase is in addition to the allowance for overshipments provided for in § 908.55. The committee shall, with the approval of the Secretary, adopt rules and regulations to establish the type of marketing incentive programs that would be available for marketing incentive alltoments as well as provide for a deduction against the quantity of oranges which a handler has available for current shipment in the event that the handler fails to use all or a portion of the marketing incentive allotment issued or uses such marketing incentive allotment for other than specified purposes. Such rules and regulations may also require that the handler, after each marketing incentive allotment period is over, furnish the committee with reports, records, and other documentation to substantiate the use of marketing incentive allotment.

[50 FR 1436, Jan. 11, 1985]

§ 908.55 Overshipments.

During any week for which the Secretary has fixed the total quantity of oranges which may be handled, any person who has received an allotment for such week as calculated under § 908.54(a), and whose total allotment is not loaned, or is not required for the repayment of an allotment loan or as a deduction for a prior overshipment, may handle in addition to such allotment an amount of such oranges equivalent to 20 percent of such allotment, or one carload, whichever is the greater: *Provided, however,* That the committee may, with the approval of the Secretary, reduce such 20 percent to a percentage not less than 10 percent: *And Provided Further,* That, if subsequent to the determination of general maturity allotment (other than short life allotment) is forfeited in any prorate district during any week such forfeiture shall be used to reduce the amount of maximum permissible overshipments made during such week unless the forfeiting handler shall have made a bona fide and timely offer to the committee to lend the handler's undershipment. Such forfeiture shall be first applied to handlers within such district in which the forfeiture occurred and second to qualified handlers in other districts. Allocation of forfeitures to handlers who have overshipped shall be made in proportion to, but not in excess of, the quantity overshipped by each such handler. In the case of short life allotments, any forfeiture thereof shall be credited as above provided only against overshipment of allotments issued pursuant to § 908.54(a). However, no handler who has overshipped more than the maximum permissible under this section shall participate in the credits allowed by this provision. The quantity of oranges so handled in excess of each such person's allotment (but not exceeding an amount equivalent to the excess shipments permitted under this section) shall be deducted from each such person's allotment for the next week: *Provided,* That no such deduction shall apply when such quantity is handled pursuant to early maturity allotment issued under § 908.60, or is entirely reduced by application of forfeited allotment. If such person's allotment for such week is in an amount less than the excess shipments permitted under this section, as reduced by the application of forfeited allotment, the remaining quantity shall be deducted from succeeding weekly allotment issued to each such person until such excess has been entirely offset: *And Provided Further,* That no overshipment incurred during one season shall be deducted from allotments issued during the following season. The provisions of this section shall not apply to any person who, during any week, has not received an allotment under this subpart for such week. The committee, with the approval of the Secretary, shall adopt procedural rules and regulations to effectuate the provisions of this § 908.55.

[50 FR 1437, Jan. 11, 1985]

§ 908.56 Undershipments.

If any person handles during any week a quantity of oranges, covered by a regulation issued pursuant to § 908.52, in an amount less than the allotment of oranges for such week, such person may handle, in addition to such person's allotment for the next two succeeding weeks only, a quantity of such oranges equivalent to such undershipment except that the undershipment of early maturity allotment shall not entitle a handler to so handle an additional quantity of oranges: *Provided,* That with the approval of the Secretary, the committee may increase or decrease the number of weeks over which undershipments of allotment may be carried forward.

[50 FR 1437, Jan. 11, 1985]

§ 908.57 Allotment loans.

(a) A person to whom allotments have been issued under general maturity or the short life provision of this subpart may, in accordance with the provisions of this section, lend such allotments to other persons, within any prorate district, to whom allotments also have been issued. Such loans shall be confirmed to the committee by both parties thereto within 48 hours after any such agreement has been entered into, and such agreements shall include a date for the repayment of such allotments to the lender during the then current marketing year. If, on the date of repayment specified in the loan agreement, the borrower has insufficient allotment to repay such loan, he shall repay such loan as soon after the repayment date as he has allotments available to him for that purpose: *Provided,* That no loans made during a marketing year shall be required to be repaid from allotments issued during the following marketing year.

(b) A person desiring to loan all or part of his allotment shall attempt to do so first within his own district and if he so chooses, may request the committee to act in his behalf. A person desiring to loan allotment to persons outside his own district shall request the committee to arrange the loan on his behalf with the committee first offering the loan to persons within the district who file requests for such loans and, failing to do so, may then arrange to offer the loan outside of the district in an equitable manner: *Provided,* That offers to loan short life allotment to persons within any district to whom allotments have been issued under general maturity shall be arranged through the committee. In each case, the committee shall confirm all such transactions immediately after the completion thereof by memorandum addressed to the parties concerned, which memorandum shall be deemed to satisfy the requirements of paragraph (a) of this section as to a confirmation of the loan agreement to the committee.

(c) An allotment shall be loaned, pursuant to paragraph (a) of this section for use only during the week for which such allotment was issued. Persons securing repayment of an allotment loan may use such allotment only during the week in which the repayment is made.

(d) No allotment which has been loaned may again be loaned by the borrower, or by the lender after the repayment thereof.

(e) No allotment may be loaned from one handler to another when such loan is brought about by the payment of a consideration.

(f) The committee may, with the approval of the Secretary, adopt procedural rules and regulations to effectuate the provisions of this § 908.57.

[19 FR 1742, Mar. 31, 1954, as amended at 21 FR 4393, June 22, 1956. Redesignated at 26 FR 12751, Dec. 30, 1961, and amended at 27 FR 10089, Oct. 13, 1962; 33 FR 19830, Dec. 27, 1968; 35 FR 16625, Oct. 27, 1970]

§ 908.58 Assignment of allotment certificates.

In connection with all handling of oranges other than shipments by rail car, each handler who first handles oranges shall at the time of handling issue to the consignee thereof, or his agent, an assignment of allotment certificate covering each quantity of oranges so handled. Such assignment of allotment certificate shall be on such forms and shall be issued in such manner as prescribed by the commit-

tee and shall contain such information as the committee may require.

§ 908.59 Priority of allotments.

During any week in which a person receives an allotment, pursuant to § 908.54, and has the right to handle a quantity of oranges in addition to the quantity represented by such allotment, by reason of (a) an undershipment of an allotment, pursuant to § 908.56; or (b) the repayment of a loaned allotment, pursuant to § 908.57; or (c) a borrowed allotment, pursuant to § 908.57; and such person handles a quantity of oranges which is less than the total quantity of such oranges which such person may handle during such week, the amount of such oranges handled shall first apply to such person's current weekly allotment (or to that portion which is not used pursuant to § 908.55 or § 908.57). The remainder, if any, shall be applied in the following order; second, to any undershipment of allotments, pursuant to § 908.56; third, to any allotment repaid to such person, pursuant to § 908.57; fourth, to any allotment borrowed, pursuant to § 908.57.

[19 FR 1742, Mar. 31, 1954. Redesignated at 26 FR 12751, Dec. 30, 1961, and amended at 50 FR 1437, Jan. 11, 1985]

§ 908.60 Early maturity allotments.

Notwithstanding the provisions of § 908.54(a) the committee shall, prior to the reaching of general maturity, issue special allotments for the handling of early maturity oranges. Handlers controlling early maturity oranges may apply to the committee for such allotments on forms prescribed by the committee and shall furnish to the committee such information as it may require. On the basis of all available information and after consideration of all of the factors enumerated in § 908.51(b), the committee shall determine the extent to which early maturity allotment shall be granted. Total early maturity allotments approved by the committee for each prorate district shall be allocated in an equitable manner among the requesting handlers who qualify therefor. Early maturity allotments issued to any handler may be used only during the week for which issued, and the undershipment of any such allotment shall not entitle such handler to handle an additional quantity of oranges due to such undershipment. Upon the reaching of general maturity, the quantity of oranges available for current shipment of any handler who failed to use all of the early maturity allotments issued to such handler shall be adjusted by deducting there from a quantity of oranges equivalent to the total quantity of such handler's oranges for which early maturity allotments were issued but were not used. A person to whom early maturity allotments have been issued may, after approval by the committee, transfer such allotments to other persons to whom such allotments also have been issued: *Provided,* That, upon such transfer of allotment, the transferee shall be obligated to use the transferred allotment during the week for which it was issued and if such handler fails to do so shall have such handler's oranges available for current shipment adjusted in the same manner as if the transferred allotment had been issued to such handler by the committee. The committee shall, with the approval of the Secretary, adopt procedural rules and regulations to effectuate the provisions of this part. Early maturity allotments issued, and any transfer thereof, under this section shall be on a prorate district basis.

[19 FR 1742, Mar. 31, 1954. Redesignated at 26 FR 12751, Dec. 30, 1961, and amended at 27 FR 10089, Oct. 13, 1962; 35 FR 16625, Oct. 27, 1970; 50 FR 1437, Jan. 11, 1985]

§ 908.61 Short life allotments.

Notwithstanding the provisions of § 908.54(a) the committee shall withhold from the allotment of handlers on a uniform proportionate basis for all handlers, an amount sufficient to permit handlers controlling oranges of short life to handle during the normal marketing period of such short life oranges as large a proportion of oranges as the average which will be handled by all handlers. Handlers controlling oranges of short life may apply for such withheld allotment, and such application shall be made on forms supplied by the committee and shall be

accompanied by information necessary to permit the committee to determine the validity of such applicant's claim to allotment. The committee shall determine, on the basis of all available information, the extent to which a handler needs allotment under the provisions of this section and pursuant to such determination shall allocate such allotment to such handler at a uniform weekly rate, insofar as practicable, during the normal marketing period of his short life oranges. Such determination and allotment issued pursuant thereto shall permit the handling in total during periods of open movement and under volume regulations of a quantity of short life oranges equal proportionately to the average to be handled by all handlers of oranges within the prorate district. After a handler of short life oranges has received allotment sufficient to permit such total handling, allotment thereafter due such handler of short life oranges shall be allocated to handlers from whom allotment has been withheld. The committee shall, with the approval of the Secretary, adopt procedural rules and regulations to effectuate the provisions of this subpart. Allotments issued and allocated under this section shall be on a prorate district basis.

[19 FR 1742, Mar. 31, 1954. Redesignated at 26 FR 12751, Dec. 30, 1961, and amended at 33 FR 19831, Dec. 27, 1968; 35 FR 16625, Oct. 27, 1970; 50 FR 1437, Jan. 11, 1985]

§ 908.61a Freeze damage allotments.

Notwithstanding the provisions of § 908.54(a) whenever one or more districts experience severe freeze damage, affecting a substantial portion of the crop within the district, but varying in degree, the committee may issue allotments to each handler in such district based upon requests submitted by handlers, the total allotment to be allocated among the requesting handlers in an equitable manner. Such allotments may be used only during the week for which issued, and the undershipment of such allotments shall not entitle such handler to handle an additional quantity of oranges due to such undershipment. Transfers of allotment if within the district are subject only to the parties notifying the committee. Transfer of allotment between handlers not within the same district shall be by the committee and only between handlers each of whom have been issued allotment pursuant to this section. The committee shall, with approval of the Secretary, adopt rules and regulations to effectuate the provisions of this section.

[33 FR 19831, Dec. 27, 1968, as amended at 50 FR 1437, Jan. 11, 1985]

§ 908.62 Information to central marketing organizations.

The committee shall give any central marketing organization, upon its request, the same notice with respect to prorate bases and allotments applicable to each handler for whom it markets oranges as is given to such handler.

§ 908.63 Recommendations for size regulation.

(a) Whenever the committee finds that the supply and demand conditions for sizes of oranges make it advisable to regulate the handling of sizes of oranges during any period, it shall recommend to the Secretary the sizes of oranges grown in each prorate district which it deems advisable to be handled during said period. The committee shall promptly submit such findings and recommendations, together with supporting information to the Secretary.

(b) In making its recommendations the committee shall give due consideration to the factors referred to in § 908.51(b).

§ 908.64 Issuance of size regulation.

Whenever the Secretary shall find, from the findings, recommendations, and information submitted by the committee, or from other available information, that to limit the handling of oranges grown in any prorate district or districts by sizes would tend to effectuate the declared policy of the act, the Secretary shall fix the sizes of oranges grown in each such prorate district which may be handled during the specified period. When any such size regulation restricts the handling of a portion of a specified size, the quantity of such size that may be han-

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dled by a handler during a particular week shall be established as a percentage of (a) the weekly allotment issued to such handler when volume regulation is in effect, and (b) the total weekly volume handled by such handler when volume regulation is not in effect. The committee shall be informed immediately of any such regulation issued by the Secretary, and the committee shall promptly give adequate notice thereof to all handlers.

[19 FR 1742, Mar. 31, 1954, as amended at 21 FR 4398, June 22, 1956. Redesignated at 26 FR 12751, Dec. 30, 1961, and amended at 50 FR 1437, Jan. 11, 1985]

§ 908.65 Exemptions from size regulation.

In the event the handling of oranges is limited pursuant to § 908.64, the committee shall issue one or more exemption certificates to any producer who furnishes evidence satisfactory to the committee that he will be prevented by reason of such regulation from having as large a proportion of his oranges handled as the average proportion of oranges which may be handled by all other producers in the same prorate district. Such exemption certificate shall permit the respective producer to whom the certificate is issued to handle or have handled a percentage of his oranges equal to the percentage determined as aforesaid. Shipments of oranges under exemption certificates issued pursuant to this section shall be subject to and limited by such regulations as may be effective under § 908.52 at the time of the respective shipment. The committee shall adopt, with the approval of the Secretary, procedural rules by which such exemption certificates will be issued to producers. Such exemption certificates may be transferred to handlers when accompanied by oranges covered by such certificates.

§ 908.66 Prorate districts.

For purposes of administration of this part and in recognition of the fact that there are general differences in maturity and keeping quality of oranges between certain geographical sections of the production area, the production area shall be divided in three prorate districts as follows:

(a) District 1 shall include that part of the State of California which is south of a line drawn due east and west through the present post office in Turlock, Calif., north of a line drawn due east and west through the present post office in Gorman, Calif., and west of the extension of a line drawn due north and south through the present post office in White Water, Calif., but excluding San Luis Obispo and Santa Barbara Counties.

(b) District 2 shall include that part of the State of California west of a line drawn due north and south through the present post office in White Water, Calif., and south of a line drawn due east and west through the present post office in Gorman, Calif., but including San Luis Obispo and Santa Barbara Counties.

(c) District 3 shall include the State of Arizona and that part of the State of California east of a line drawn due north and south through the present post office in White Water, Calif.

[19 FR 1742, Mar. 31, 1954. Redesignated at 26 FR 12751, Dec. 30, 1961, and amended at 27 FR 10089, Oct. 13, 1962; 33 FR 19831, Dec. 27, 1968]

§ 908.67 Oranges not subject to regulation.

Except as otherwise provided in this section, nothing contained in this subpart shall be construed to authorize any limitation of the right of the initial handler of oranges to: (a) Handle oranges to charitable institutions for consumption by such institutions or to relief agencies for distribution by such agencies; (b) handle oranges to commercial processors for processing into products, including juice; (c) export oranges or handle oranges to exporters for export purposes; (d) handle oranges by parcel post or by railway express; or (e) handle oranges in such minimum quantities or in such types of shipments as the committee may, with the approval of the Secretary, prescribe. No assessment shall be levied pursuant to § 908.41 on oranges disposed of for the purposes specified in this section. The committee shall periodically review and prescribe, with the approval of the Secretary, such rules, regulations, and safeguards as it may deem necessary to prevent or-

anges shipped under the provisions of this section from entering into commercial channels of trade contrary to or in violation of this subpart.

[50 FR 1437, Jan. 11, 1985]

Reports

§ 908.70 Weekly report.

On or before such day of each week as may be designated by the committee, each person who first handles oranges shall report to the committee, in such manner as may be designated and on forms made available by it, the following information with respect to the total of all oranges disposed of by each such handler during the immediately preceding week: (a) The total quantity handled; (b) the total quantity disposed of for manufacture into by-products, showing the identity of each by-products processor involved and the quantity of each; (c) the total quantity disposed of for export, showing the destination and quantity of each such disposition; (d) the total quantity shipped for disposition to persons on relief, including quantity donated for charitable purposes, and shipments by parcel post or express, showing the destination and quantity of each such shipment; and (e) the total quantity disposed of otherwise, showing manner and quantity of each such disposition.

[50 FR 1438, Jan. 11, 1985]

§ 908.71 Manifest report.

Each person who first handles oranges shall furnish to the committee information regarding the size of oranges in each standard packed carton or its equivalent handled by such handler whether such shipments were destined to points in the continental United States or to Canada and shall mail or deliver such information to said committee or its duly authorized representative within 24 hours after shipment is made in such manner as the committee shall prescribe and upon forms prepared by it.

[50 FR 1438, Jan. 11, 1985]]

§ 908.72 Other reports.

Upon request of the committee, made with the approval of the Secretary, every person subject to regulation under this part shall furnish to the committee, in such manner and at such times as it may prescribe, such other information as will enable the committee to perform its duties under this part.

Records and Retention

§ 908.73 Reports.

(a) Each handler shall maintain such records which will clearly show the details of such handler's receipts and acquisition of oranges, sales, shipments, dispositions, inventories and such other specific information as prescribed by the committee and approved by the Secretary which will relate to the handling and disposition of oranges.

(b) All such records specified shall be retained by the handler for a period of three years following the end of the fiscal year in which such transactions occurred. If within the three-year period, the committee notifies the handler in writing that the retention of such records, or specified records, is necessary in connection with a proceeding under the act, a court action, or a compliance investigation by the Secretary or the committee specified in such notice, the handlers shall retain such records, or specified records, until further written notification from the committee. The committee shall give further written notification to the handler when retention of the records is no longer necessary.

(c) Each handler shall make available to authorized representatives of the committee and the Secretary at any time during reasonable business hours all records provided for in this part for examination and audit, and shall permit access to all premises where records are maintained or stored and where oranges are received, stored, prepared for market, or handled. The committee shall make such checks of oranges or audits of handlers' records as it deems appropriate or which are requested by the Secretary to ensure that accurate information as required in this part is being furnished by handlers.

(d) All reports and information submitted by handlers pursuant to the provisions of this part shall be received by and at all times be in the custody of one or more designated employees of the committee. Such employees shall not disclose to any person, other than the Secretary upon request therefor, data, or information obtained or extracted from such reports and records which might affect the trade position, financial condition, or business operation of the particular handler from whom received: *Provided*, That such data and information may be combined, and made available in the form of general reports in which the identities of the individual handlers furnishing the information is not disclosed.

[50 FR 1438, Jan. 11, 1985]

MISCELLANEOUS PROVISIONS

§ 908.80 Compliance.

Except as provided in this part, no person shall handle oranges during any week in which a regulation issued by the Secretary pursuant to § 908.52 is in effect, unless such oranges are, or have been, handled pursuant to an allotment therefor, or unless such person is otherwise permitted to handle such oranges under the provisions of this part; and no person shall handle oranges except in conformity with the provisions of this subpart and the regulations issued under this part.

§ 908.81 Right of the Secretary.

The members of the committee (including successors and alternates), and all agents, employees, or representatives thereof, shall be subject to removal or suspension by the Secretary at any time. Each and every regulation, decision, determination, or other act of the committee shall be subject to the continuing right of the Secretary to disapprove of the same at any time. Upon such disapproval, the disapproved action of the committee shall be deemed null and void, except as to acts done in reliance thereon or in compliance therewith prior to such disapproval by the Secretary. If the committee, for any reason, fails to perform its duties or exercise its powers under this subpart, the Secretary may designate another agency to perform such duties and exercise such powers.

§ 908.82 Effective time.

The provisions of this part shall become effective at such time as the Secretary may declare above his signature to this part, and shall continue in force until terminated in one of the ways specified in § 908.83.

§ 908.83 Termination.

(a) The Secretary may at any time terminate the provisions of this part by giving at least one day's notice by means of a press release or in any other manner which he may determine.

(b) The Secretary shall terminate or suspend the operation of any and all of the provisions of this part whenever he finds that such provisions do not tend to effectuate the declared policy of the act.

(c)(1) The Secretary shall terminate the provisions of this part at the end of a crop year in which the Secretary has found by referendum that such termination is favored by producers who, during a representative period determined by the Secretary, have been engaged in the production for market of oranges in the production area: *Provided*, That such termination shall be effective only if announced on or before December 1 of the then current fiscal year.

(2) To determine whether continuance is favored by producers, the required percentages set forth in the act with respect to producer approval of the issuance of a marketing order regulating the handling of citrus fruits produced in any area producing what is known as California citrus fruits (approval by three-fourths of the producers who, during a representative period, determined by the Secretary, have been engaged, within the production area in the production of Valencia oranges for market; or by producers who, during such representative period, have produced for market at least two-thirds of the volume of Valencia oranges produced within the production area for market) shall be used. In the event that a referendum is utilized to aid in making this deter-

mination, such required percentages for continuance shall be held to be complied with if, of the total number of producers, or the total volume of Valencia oranges produced for market, as the case may be, represented in such referendum, the percentage favoring continuance is equal to or in excess of the percentage required.

(d) Upon recommendation of the committee, received not later than August 15 of an odd numbered year, the Secretary shall conduct a referendum prior to October 15 of such year to ascertain whether continuance of this part is favored by growers as determined in accordance with (c)(2) of this section. The committee, with the approval of the Secretary, shall adopt such rules and regulations as necessary to establish the basis for the recommendation provided for in this section.

(e) The Secretary shall conduct a referendum by October 15 of the sixth year following the effective date of this section and no later than October 15 every sixth year thereafter to find whether, in accordance with paragraph (c) of this section, continuance of the order is favored by producers.

(f) The provisions of this part shall, in any event, terminate whenever the provisions of the act authorizing them cease to be in effect.

[19 FR 1742, Mar. 31, 1954. Redesignated at 26 FR 12751, Dec. 30, 1961, and amended at 27 FR 10089, Oct. 13, 1962; 50 FR 1438, Jan. 11, 1985]

§ 908.84 Proceedings after termination.

(a) Upon the termination of the provisions of this part, the committee shall, for the purpose of liquidating the affairs of the committee, continue as trustees of all the funds and property then in its possession or under its control, including claims for any funds unpaid or property not delivered at the time of such termination.

(b) The said trustees shall (1) continue in such capacity until discharged by the Secretary; (2) from time to time account for all receipts and disbursements and deliver all property on hand, together with all books and records of the committee and of the trustees, to such person as the Secretary may direct; and (3) upon the request of the Secretary execute such assignments or other instruments necessary or appropriate to vest in such person full title and right to all of the funds, property, and claims vested in the committee or the trustees pursuant thereto.

(c) Any person to whom funds, property, or claims have been transferred or delivered, pursuant to this section, shall be subject to the same obligation imposed upon the committee and upon the trustees.

§ 908.85 Effect of termination or amendment.

Unless otherwise expressly provided by the Secretary, the termination of this part or of any regulation issued pursuant to this part, or the issuance of any amendment to either thereof, shall not (a) affect or waive any right, duty, obligation, or liability which shall have arisen or which may thereafter arise in connection with any provision of this part or any regulation issued under this part, or (b) release or extinguish any violation of this part or of any regulation issued under this part, or (c) affect or impair any rights or remedies of the Secretary or of any other person with respect to any such violation.

§ 908.86 Duration of immunities.

The benefits, privileges, and immunities conferred upon any person by virtue of this part shall cease upon its termination, except with respect to acts done under and during the existence of this part.

§ 908.87 Agents.

The Secretary may, by designation in writing, name any officer or employee of the United States, or name any agency or division in the United States Department of Agriculture, to act as his agent or representative in connection with any of the provisions of this part.

§ 908.88 Derogation.

Nothing contained in this part is, or shall be construed to be, in derogation or in modification of the rights of the Secretary or of the United States (a) to exercise any powers granted by the

act or otherwise, or (b) in accordance with such powers, to act in the premises whenever such action is deemed advisable.

§ 908.89 Personal liability.

No member or alternate member of the committee and no employee or agent of the committee shall be held personally responsible, either individually or jointly with others, in any way whatsoever, to any person for errors in judgment, mistakes, or other acts, either of commission or omission, as such member, alternate, employee, or agent, except for acts of dishonesty, willful misconduct, or gross negligence.

§ 908.90 Separability.

If any provision of this subpart is declared invalid or the applicability thereof to any person, circumstance, or thing is held invalid, the validity of the remainder of this part or the applicability thereof to any other person, circumstance, or thing shall not be affected thereby.

Subpart—Rules and Regulations

Definitions

§ 908.100 Definitions.

(a) "Rules and regulations" means the provisions of this subpart.

(b) "Order No. 908" means the order (§§ 908.1 to 908.90) regulating the handling of Valencia oranges grown in Arizona and a designated part of California as from time to time amended.

(c) Except as otherwise prescribed in this subpart, terms used in the rules and regulations shall have the same meaning as when used in Order No. 908 (§§ 908.1 to 908.90).

(d) "Handle oranges to commercial processors for processing into products, including juice" means the handling of oranges to a person on the list of approved by-product manufacturers, as provided in § 908.131(b).

(e) Pursuant to § 908.18, the quantity of oranges comprising a carload, as such term is therein defined, means a quantity of oranges equivalent to 1,000 cartons of oranges.

(f) Whenever the term "week" or "weekly" appears in Part 908 it shall mean the period from Friday through the following Thursday.

(g) Whenever a time of day is specified in this subpart, it shall mean local time in effect at the headquarters of the committee in Los Angeles, Calif., except when specifically stated otherwise.

(h) The regular weekly meeting of the committee is held on Tuesday at the headquarters in Los Angeles. Whenever the committee determines that its meeting should be at another place or on a day other than the regular weekly day, it shall advise handlers by notice mailed not less than five days before the meeting.

[19 FR 3214, June 2, 1954, as amended at 24 FR 9188, Nov. 11, 1959. Redesignated at 26 FR 12751, Dec. 30, 1961, and amended at 33 FR 3167, Feb. 20, 1968; 35 FR 457, Jan. 14, 1970; 42 FR 20473, Apr. 20, 1977; 46 FR 42839, Aug. 25, 1981]

General

§ 908.101 Communications.

Unless otherwise prescribed in this subpart or in Order No. 908 (§§ 908.1 to 908.90), or required by the Valencia Orange Administrative Committee, all reports, applications, submittals, requests, and communications in connection with Order No. 908 shall be addressed as follows:

Valencia Orange Administrative Committee, 117 West Ninth Street, Room 913, Los Angeles, Calif. 90015.

[19 FR 3215, June 2, 1954. Redesignated at 26 FR 12751, Dec. 30, 1961, and amended at 35 FR 457, Jan. 14, 1970]

§ 908.102 Nomination procedure.

(a) The time of nominating grower and handler members and alternate members of the committee shall be not later than 20 days preceding the date of expiration of the terms of the members and alternate members of the committee. The manner of nominating members and alternate members of the committee shall be as follows:

(1) Any cooperative marketing organization which handled more than 50 percent of the total volume of Valencia oranges handled during the marketing year in which nominations for

members and alternate members of the committee are submitted by such organization shall, by resolution adopted by its board of directors, nominate members and alternate members as provided in § 908.22(b).

(2) All cooperative marketing organizations which are not qualified to nominate members and alternate members pursuant to § 908.22(b), or the growers affiliated therewith, shall nominate members and alternate members as provided in § 908.22(c). The vote of each such organization shall be weighted, as provided in § 908.22(e), by the quantity of oranges which it handled during the marketing year in which the nominations are made.

(3) Not less than five meetings shall be held at such times and places throughout the production area as may be designated by the agent of the Secretary, at which growers who are not members of, or affiliated with, the organizations included under paragraphs (a)(1) and (2) of this section may vote. At each such meeting, the growers present shall nominate members and alternate members as provided in § 908.22(d). The number of ballots to be cast in selecting the nominees at any such meeting shall be determined at that meeting. All growers voting at any such meeting shall submit their names and addresses to the agent of the Secretary.

(4) The agent of the Secretary shall give adequate notice of each meeting to be held pursuant to this section.

[19 FR 1748, Mar. 31, 1954. Redesignated at 26 FR 12751, Dec. 30, 1961, and amended at 35 FR 457, Jan. 14, 1970; 36 FR 1878, Feb. 3, 1971; 42 FR 20473, Apr. 20, 1977]

§ 908.103 Rates of compensation.

(a) Except as provided in paragraph (b) of this section, grower and handler members, alternates, and additional alternates of the committee shall be compensated while in the performance of their duties at a rate of $50 per day. The member and alternate nominated and selected pursuant to § 908.22(f) shall be so compensated at a rate of $100 per day. In addition, all members, alternates, and additional alternates shall receive $50 for each day in travel, excluding the day(s) on which duties are being performed.

(b) When a grower or handler member, alternate, or additional alternate of the Valencia Orange Administrative Committee (VOAC) attends both a meeting of the VOAC and a meeting of the Navel Orange Administrative Committee (NOAC) under Part 907 on the same day, and when compensation is due from both committees, the VOAC shall pay such member, alternate, or additional alternate $37.50 per day for attending the VOAC meeting and $25 per day for each day in travel status, excluding the day on which the meeting is held. When the member or alternate selected pursuant to § 908.22(f) attends both a meeting of the VOAC and the NOAC on the same day, and when compensation is due from both committees, the VOAC shall pay such member or alternate $75 per day for attending the VOAC meeting an $25 for each day in travel, excluding the day(s) on which the meeting is held.

[50 FR 19520, May 9, 1985]

§ 908.104 Selection criteria.

(a) For purposes of this part, the term "cooperative marketing organization" shall mean an association of producers that:

(1) Is qualified as a Capper-Volstead cooperative under the provisions of the Act of the Congress of February 18, 1922, known as the "Capper-Volstead Act," (7 U.S.C. 291, 292); and

(2) Markets oranges regulated under this part, or performs handling functions as defined in § 908.11 for the producers thereof.

(b) Pursuant to § 908.23 the Secretary shall select committee members, and their respective alternates and additional alternates, as follows:

(1) Three grower members who shall be affiliated with the cooperative marketing organization which handled more than 50 percent of the total volume of oranges during the marketing year in which nominations are made, and two handler members to represent such an organization;

(2) One grower member who shall be affiliated with any of the other cooperative marketing organizations, and

one handler member to represent such organizations; and

(3) Two grower members not affiliated with any cooperative marketing organization, and one handler member who is not a member or principal of any cooperative marketing organization to represent all handlers which are not cooperative marketing organizations.

[50 FR 50761, Dec. 12, 1985]

EFFECTIVE DATE NOTE: Section 908.104 was added at 50 FR 50761, Dec. 12, 1985, effective January 13, 1986.

STORAGE OF ORANGES WITHIN PRODUCTION AREA

§ 908.105 Oranges stored within the production area.

Any person who has oranges available for current shipment and controls such oranges within the meaning of § 908.53 may place such oranges in storage within the production area. Thereafter, such person shall, except with respect to oranges stored where prepared for market, report to the committee, on V.O.A.C. Form No. 17, not later than Monday noon of the next calendar week, all oranges so stored.

[19 FR 3215, June 2, 1954. Redesignated at 26 FR 12751, Dec. 30, 1961]

PRORATE BASES AND ALLOTMENTS

§ 908.108 Prorate bases and allotments.

(a) *Application to be filed.* Each person who has oranges available for current shipment and desires to handle the oranges shall submit to the committee upon request, on V.O.A.C. Form No. 1, an application for a prorate base and allotments. The application shall contain the information required pursuant to § 908.53(b) and a certification to the U.S. Department of Agriculture and the Valencia Orange Administrative Committee by the handler that the information in the application is true and that he has control, for all purposes relating to this part, of the oranges described in the application. The application shall be supported by a list of growers, on V.O.A.C. Form No. 1-A, whose oranges the applicant controls for all purposes relating to the marketing order showing for each listed grower's oranges, the name and address of the grower and the location, acreage, tree count, year in which trees were planted for trees less than eight years in the ground, and estimated yield of each grove or portion of a grove as may be designated by the committee.

(b) *Change in control of oranges occasioned by transfer of real property.* In the event a change in control of oranges is occasioned by a bona fide transfer of the ownership of the real property on which such oranges were produced, the person gaining the control shall request the committee to make the adjustment prescribed in § 908.53(e). Such request shall set forth the names of the parties to the transfer, and be accompanied by a legal description of the real property transferred, the name of the county, the book, page number and date showing that such transfer has been duly recorded. The request shall also set forth the name of the person losing control of the oranges. Upon determination by the committee that the change in control of the oranges has been occasioned by such transfer, the quantity of oranges available for current shipment of the person gaining such control shall be adjusted by adding thereto a quantity of oranges equal to the quantity deducted from the oranges available for current shipment of the person losing control of such oranges. Such quantity shall be added during the same periods in which the deductions are effected in accordance with the provisions of paragraph (c) of this section.

(c) *Loss of control of oranges.* If a person loses control of oranges and has handled a quantity thereof less than the quantity that could have been handled under allotments issued thereon, the quantity of oranges available for current shipment by such person shall be adjusted by deducting therefrom a quantity of oranges equivalent to the quantity upon which allotments were issued, but which were not utilized thereon. The quantity so determined shall be deducted during a period of 4 consecutive weeks in all prorate districts (or during the remainder of the applicable marketing season for the respective prorate dis-

trict if it is of shorter duration than the designated period): *Provided,* That, insofar as practicable, such deduction for any weekly period shall not exceed the amount which would decrease by one-half the allotment, other than short-life allotment, that otherwise would be issued to such person for such weekly period in the absence of such deduction, and, if necessary to effect this requirement, the applicable period specified in this section for making such deductions may be extended.

(d) *Adjustment of prorate bases.* (1) The prorate bases of handlers shall be adjusted to correct errors, omissions, or inaccuracies, as provided in this part, during a period of 4 consecutive weeks in all prorate districts (or during the remainder of the applicable marketing season for the respective prorate district if it is of shorter duration than the designated period): *Provided,* That insofar as practicable, such deduction for any weekly period shall not exceed the amount which would decrease by one-half the allotment, other than short-life allotment, that otherwise would be issued to such person for such weekly period in the absence of such deduction, and, if necessary to effect this requirement, the applicable period specified in this section for making such deductions may be extended.

(2) When a handler has moved all of the oranges under his control in a particular district and has received allotment sufficient to repay all loans of allotments received by him under the provisions of § 908.57, such handler shall receive no further allotment for such oranges unless, during the same marketing season, he subsequently gains control of oranges, in the same district, which he desires to handle and promptly submits a report thereon to the committee in accordance with § 908.53(d).

[19 FR 3215, June 2, 1954, as amended at 21 FR 6084, Aug. 15, 1956. Redesignated at 26 FR 12751, Dec. 30, 1961, and amended at 32 FR 7840, May 30, 1967. Redesignated at 35 FR 457, Jan. 14, 1970, and amended at 36 FR 1878, Feb. 3, 1971; 42 FR 20473, Apr. 20, 1977]

§ 908.110 Equity of marketing opportunity.

Equity of marketing opportunity between prorate districts shall be afforded by the following procedure:

(a) The committee shall establish an equity factor which is the same for all prorate districts. The equity factor shall be stated as a percentage of the tree crop in each district and shall reflect a quantity of oranges (grown in each district) for which there will be equitable marketing opportunity under volume regulation during the ensuing season.

(b) At the marketing policy meeting for each prorate district, the committee shall formulate a weekly shipping schedule for the ensuing season reflecting, insofar as practicable, the desire of growers and handlers of oranges within the district as to the quantity of oranges grown in that district to be shipped under volume regulation each week. The quantity of oranges on such schedules shall be computed by application of the equity factor to the tree crop of the district. The seasonal periods covered by such schedules shall be determined by the committee. Prior to any marketing policy meeting for a prorate district the committee may consult with such growers and handlers regarding formulation of such schedule.

(c) Following any or all marketing policy meetings for the districts, the committee may review and make equitable modifications as it considers advisable in the equity factor and weekly shipping schedules.

(d) The committee shall develop a weekly shipment allocation schedule for each district commencing the week that regulation other than early maturity allotment is first recommended for the district and continuing through the remainder of the season. The quantities of oranges shown for each week shall be the cars appearing on the then effective shipping schedule for the week for the district, plus a proportionate amount of the quantities appearing on the weekly shipping schedule during weeks when no regulation or early maturity allotment was in effect for the district. Whenever two or more districts are shown on the

weekly shipment allocation schedule, the committee shall combine into a weekly total the quantity of oranges shown thereon for each week and the weekly quantity for a district shall be converted into a percentage of the weekly total. The percentage shall be known as the percentage allocation to a district.

(e) Insofar as practicable, the committee shall, pursuant to § 908.51(a), base its weekly recommendations for the allocation of general maturity allotments and of freeze damage allotments among the prorate districts upon the percentage allocations for the districts provided for in § 908.110(d) of this subpart.

(f) The committee shall make such adjustments as it deems advisable in the equity factor, the weekly shipping schedules, and the percentage allocations to prorate districts, so as to reflect changing crop or market conditions. Any such adjustment in the weekly shipping schedule for a prorate district shall be based on the tree crop of handlers in the district who are on the prorate base at the time of adjustment and on the tree crop of all handlers in the district who received short-life allotment. Appropriate adjustments shall be made in the schedules and percentage allocations as soon as possible after a change in the estimated tree crop of any prorate district. Whenever a prorate district nears the end of the shipping schedule for that district and the committee ascertains that oranges (grown in that district) remain for handling under volume regulation, the committee may (1) adjust the equity factor upward with corresponding changes in the weekly shipping schedules for all districts or (2) adjust the weekly shipping allocation schedules for all districts by adding thereto the difference between the aggregate quantity of oranges listed on the weekly shipment allocation schedule of each district during all of the preceding weeks and the sum of the aggregate quantity of oranges fixed by the Secretary for handling under general maturity and freeze damage allotment. Adjustments in the weekly shipping schedules for each of the prorate districts may be made by adding weeks to or deleting weeks from the schedule and, if deemed advisable, by proportionate modification of the desired shipments shown thereon for the remaining weeks of the season or any portion thereof.

(g) The committee shall calculate each season as soon as it is feasible, an estimated percentage of the total tree crop in the production area which, in the judgment of the committee will be handled under volume regulation and prepare a schedule of estimated weekly shipments based thereon, taking into account the purposes of the act. Such percentage and schedule shall be used as the reference for determining adjustments in the prorate base of handlers, for granting short-life allotment, and for matters wherein it is necessary to consider utilization of the crop within a district.

[35 FR 457, Jan. 14, 1970, as amended at 42 FR 20474, Apr. 20, 1977]

§ 908.111 Allotment loans.

(a) *Loans arranged by handlers.* Loans arranged by handlers shall be subject to the following:

(1) *Payback date.* Each allotment loan agreement entered into by a handler must provide for a definite payback date specified by the lender. Each loan agreement entered into between handlers in the same district to whom short-life allotments have been issued shall provide for the repayment of the loan during the time the borrowing short-life handler will be issued allotment.

(2) *Ability to repay.* Allotment loan transactions shall be limited to the borrowing handler's calculated ability to make repayment whenever the payback date falls within the scheduled shipping period of the borrowing handler.

(3) *Confirmation.* All allotment loans made on Saturday shall be confirmed as required by § 908.57 but not later than 4:30 p.m. on the following Monday.

(b) *Loans arranged by the committee.* The committee shall arrange loans for handlers subject to paragraph (a) (1) and (2) of this section and, to the extent practicable, in accordance with the following:

(1) The committee shall give priority, in arranging loans, to those offers which have a specific payback date within the current scheduled shipping period of borrowing handlers.

(2) Except as otherwise provided in paragraph (b)(5)(iii) of this section, the committee shall consider offers to loan and requests to borrow received prior to 12 m. Monday separately from offers and requests received thereafter during the week.

(3) Each handler offering allotment for loan shall specify at least two payback dates. To receive a loan of any such allotment, or portion thereof offered, the payback date specified by the requesting handler must be the same as one of the repayment dates specified by the offering handler.

(4) In arranging loans for handlers to whom short-life allotments have been issued, the committee shall offer such loans first, to other handlers within the same district to whom short-life allotments have been issued; second, to handlers within the same districts to whom general maturity allotments have been issued; and third, to handlers in other districts to whom allotments have been issued. All such loans to handlers to whom general maturity allotments have been issued shall provide for a payback date within the scheduled shipping period of the lending short-life handler.

(5) Loan offers and requests received by the committee prior to 12 m. Monday shall be applied first to the arrangement of loans between handlers within the same prorate district in accordance with the following provisions:

(i) If requests from handlers, in a prorate district, for general maturity allotment exceed the quantity offered by handlers in that district, the quantity offered shall be apportioned to each borrowing handler so that the amount he receives bears the same ratio to the total amount received by all borrowing handlers as the amount of his tree crop bears to the total tree crop of all borrowing handlers. If the quantity of general maturity allotment offered in any prorate district exceeds the quantity requested in that district, the same proportion of each offering handler's allotment shall be loaned; and any surplus general maturity allotment from such prorate district shall be apportioned, as aforesaid, to fill requests from borrowing handlers in all other prorate districts.

(ii) If requests from handlers, in a prorate district, for short-life allotment exceed the quantity offered by handlers in that district, the quantity offered shall be equitably apportioned to each borrowing handler so that the amount he receives bears the same ratio to the total amount received by all borrowing handlers as his tree crop bears to the total tree crop of all borrowing handlers. If the quantity of short-life allotment offered in a prorate district exceeds the quantity requested in that district, the same proportion of each lending handler's allotment shall be loaned.

(iii) Such loan offers and requests may be modified or withdrawn any time prior to 12 m. Monday, after which time the committee shall arrange allotment loans on the basis of the offers and requests, including modifications thereof, then pending without further action by the handlers involved. Loan offers and requests not fully utilized in such allotment loan arrangements may be modified or withdrawn.

(6) Offers to loan allotment received by the committee at, or subsequent to, 12 m. Monday shall be applied first to the arrangement of loans to handlers within the same prorate district whose requests were received prior to such time, but had not been completely filled. Any remaining allotment shall then be applied to the arrangement of loans to handlers within that district to fill any requests as thereafter received. Allotment loan offers received from handlers in a prorate district at, or subsequent to, 12 m. Monday and for which there are no requests by handlers in that district, may be applied by the committee to the arrangement of loans to fill requests from handlers in other prorate districts. If the total allotment offered for loan in the same prorate district exceeds total requests in such district, the same proportion of each lending handler's allotment shall be loaned. If the quantity of allotment requested by handlers in a prorate district exceeds the quan-

tity offered, the quantity each borrowing handler receives shall bear the same ratio to the total amount received by all borrowing handlers as his tree crop bears to the total tree crop of all borrowing handlers.

(i) Offers to loan, and request to borrow, allotment received at, or subsequent to, 12 m. Monday may be modified or withdrawn: *Provided,* That allotment loan arrangements with respect to such offered allotment have not been completed by the committee.

(7) Offers to loan, and requests for, allotment may be made in person, by telephone, or telegram, or in writing. Immediately after completing arrangements for a loan, the committee shall confirm the terms thereof by mailing VOAC Form 6 Confirmation of Allotment Loan to the handlers involved.

(c) Whenever any Monday herein specified falls on a legal holiday, the next following business day shall be applicable.

[35 FR 458, Jan. 14, 1970, as amended at 36 FR 1879, Feb. 3, 1971]

§ 908.112 Assignment of allotment certificates.

In connection with all handling of oranges other than shipments by rail car, each handler at the time of handling of each lot of oranges shall issue to the purchaser or consignee an assignment of allotment certificate covering each quantity of oranges so handled. Such assignment of allotment certificate shall be on V.O.A.C. Form No. 8 and shall contain the following information: (a) Date oranges delivered; (b) name and address of purchaser or consignee; (c) quantity of oranges in terms of the number of cartons of oranges; (d) prorate district in which such oranges were produced; (e) name and address of the person to whom such oranges were delivered; (f) the license number of the truck transporting such oranges from handler's place of business; (g) the size of the oranges; (h) the date of issue; and (i) the name of the person or firm issuing the assignment of allotment certificate. Such assignment shall also contain a certification to the United States Department of Agriculture and to the committee as to the truthfulness of the information shown thereon. If the shipment contained oranges not packed in cartons or in bags, the handler shall file with the committee, no later than 10 days following the shipment, information satisfactory to the committee which substantiates, and which shows the derivation of the amount of equivalent cartons, by sizes, contained in the shipment and reported on the assignment of allotment certificate.

[19 FR 3215, June 2, 1954, as amended at 24 FR 3623, May 6, 1959. Redesignated at 26 FR 12751, Dec. 30, 1961, and amended at 33 FR 3167, Feb. 20, 1968; 42 FR 20474, Apr. 20, 1977]

§ 908.113 Early maturity allotments.

(a) *Applications to be filed.* On or before 12 o'clock noon of the day preceding the regular weekly meeting day of the committee, or at another time and day which may be prescribed by the committee whenever it determines that its meeting should be on a day other than the regular weekly meeting day or whenever a holiday precedes the meeting day, any handler controlling early maturity oranges who desires to receive early maturity allotment for use during the following week must request the allotment from the committee by telephone or telegram, or by an application on V.O.A.C. Form No. 9 delivered to the committee at any of its designated offices. Telephone and telegram requests shall be confirmed either by (1) delivering to the committee not later than the meeting day a duly executed V.O.A.C. Form No. 9, or (2) mailing to the committee such V.O.A.C. Form No. 9 postmarked not later than the meeting day. Requests for early maturity allotment, or for changes in requests previously made, shall not be considered by the committee if received after 12 o'clock noon of the day preceding the regular weekly meeting day of the committee, or if received after the time prescribed by the committee whenever the weekly meeting is held other than on the regular meeting day or is preceded by a holiday. Each application, and each confirmation, on V.O.A.C. Form No. 9, shall indicate the name and address of the applicant,

the general location of early maturity oranges for which allotment is desired, the number of cartons of allotment desired, and such other pertinent information as the committee may from time to time request.

(b) *Transfer of allotment.* Any handler who transfers early maturity allotment to another handler to whom early maturity allotment is issued must notify the committee of such transfer on or before 12 o'clock noon of the Friday following the week for which such allotment was issued. Unless such notification is received by the committee within the time prescribed the allotment shall be charged to the handler to whom it was issued and failure to ship the allotment shall be the responsibility of such handler. The committee shall confirm all qualifying transfers by memorandum addressed to the parties concerned, which memorandum shall be deemed to satisfy the requirements of this section.

(c) Early maturity allotments shall be allocated to handlers on the basis of requests whenever the committee considers it advisable to grant the full amount of the requests. Whenever the committee considers it inadvisable to grant the full amount of early maturity allotments requested by all handlers, the requests of each handler shall be granted in the same proportion as the handler's tree crop is to the tree crop of all requesting handlers without regard to districts, but not in excess of the amount requested, and any allotment then remaining shall be granted in successive increments, as necessary, to handlers filing requests in the same proportion as aforesaid, but not in excess of the amount requested. District allotments shall be the sum of allotments allocated to handlers within each district as determined according to the foregoing procedure.

[28 FR 2353, Feb. 12, 1963, as amended at 32 FR 3688, Mar. 3, 1967; 33 FR 3167, Feb. 20, 1968; 42 FR 20474, Apr. 20, 1977]

§ 908.114 Short life allotments.

(a) *Qualification for short life allotment.* A handler shall be considered to have short life oranges when he has oranges which historically are known to lack keeping qualities which will permit him to handle, during the normal marketing period for the oranges grown in the prorate district, the same proportion of his oranges as the average which will be handled by all handlers pursuant to § 908.110(g).

(b) *Application to be filed.* Each handler controlling short-life oranges who desires to obtain short-life allotments shall file with the committee, at the time of filing his application for a Prorate Base and Allotments, an application for such allotment on V.O.A.C. Form No. 10. The application shall contain the following information: Name and address of applicant; location of each grove producing short life oranges; a record covering the maximum years available, but not in excess of the 10 immediately preceding years, showing the marketing period of the oranges covered by the application; a suggested shortened marketing season showing the final date when the short life oranges covered by the application should be marketed; and, a showing satisfactory to the committee why the oranges covered by the application cannot be marketed during the normal marketing period for the applicable district through appropriate adjustments in the handler's packinghouse operations.

[19 FR 3215, June 2, 1954. Redesignated at 26 FR 12751, Dec. 30, 1961, and amended at 35 FR 459, Jan. 14, 1970]

§ 908.116 Credit forfeitures.

(a) The forfeiture of any handler's general maturity allotment that was neither used nor loaned to another handler shall be applied to reduce overshipments of handlers as provided in § 908.55 unless the forfeiting handler made a bona fide and timely offer to the committee to lend his undershipment. An offer shall be considered bona fide and timely if such offer (1) was received in the office of the committee by 12 m. Monday, or the next following business day if Monday is a legal holiday, and (2) contained at least two alternative payback dates. All short life allotment that is forfeited shall be applied to reduce overshipments of handlers as provided in § 908.55.

(b) If the forfeiture of allotment in a prorate district exceeds that required to offset overshipments in such district and overshipments exceed forfeitures in other districts, the surplus forfeiture credit shall be allocated, as provided in § 908.55, to the handlers in the deficit districts in proportion to their permissible overshipments.

[35 FR 459, Jan. 14, 1970]

§ 908.117 Freeze damage allotments.

(a) At least 6 days before any meeting held by the committee to consider the quantity of allotments to be issued in any one or more prorate districts pursuant to § 908.61a, the committee shall mail written notice to handlers in such districts of its intention advising handlers that applications for such allotments shall be filed with the committee as hereinafter provided.

(b) Whenever freeze damage allotments are to be issued in a prorate district pursuant to § 908.61a on the basis of requests by handlers, the committee shall determine on the basis of all available information and after consideration of all of the factors enumerated in § 908.51(b), the extent to which freeze damage allotments should be granted in such district.

(c) Any handler who desires to receive freeze damage allotment shall request such allotment in person, or by telephone, telegram, or by filing V.O.A.C. Form 35 on or before 12 o'clock noon of the day before the regular weekly meeting of the committee, or at another time and day which may be prescribed by the committee whenever it determines that its meeting should be on a day other than the regular weekly meeting day or whenever a holiday precedes the meeting day. Such requests may be made at any of the offices of the committee. V.O.A.C. Form No. 35 shall contain (1) the name and address of the handler, (2) the week for which the application is made, (3) the amount of freeze damage allotment requested, and (4) the signature of the handler or authorized representative. All requests not made by a properly completed V.O.A.C. Form No. 35 shall be confirmed by delivering to the committee at any of the offices, not later than the day preceding the meeting day, a properly completed V.O.A.C. Form No. 35 or by mailing a properly completed form to the committee not later than the meeting day.

(d) Whenever the total amount of freeze damage allotment the committee determines should be granted to handlers within a prorate district equals or is larger than the total amount applied for in such district, the full amount applied for in each application shall be granted. Whenever the total amount applied for exceeds the total amount of freeze damage allotment the committee deems should be granted in the district, the request of each handler in such district shall be granted in the same proportion as the handler's tree crop bears to the total tree crop of requesting handlers in that district, but not in excess of the amount requested, and any allotment then remaining shall be granted in successive increments, as necessary to handlers filing requests, in proportion to the tree crop controlled by each, but not in excess of the amount requested.

(e) Any handler to whom freeze damage allotment is issued may transfer such allotment, or portion thereof, to another such handler in the same prorate district; and such handlers shall notify the committee of such transfer on or before 12 m. Friday, or the following business day if Friday is a legal holiday, of the week following the one for which such allotment was issued. Such notification shall show names of the parties, the amount of the allotment transferred, and the week thereof.

(f) Any handler to whom freeze damage allotment is issued and who desires transfer of freeze damage allotment from or to other such handlers within another prorate district shall so notify the committee in person, by telephone, or telegram, or in writing by 12 m. Wednesday of the week for which the allotment was issued, or by 12 m. of the preceding day if Wednesday is a legal holiday. The committee shall endeavor to effect a transfer of allotment and shall confirm each such transfer to the handlers involved. In the event the total amount of the allotment available for transfer is less than the total amount requested, the

committee shall transfer the available allotment to the requesting handlers proportionately as provided in paragraph (d) of this section.

[35 FR 459, Jan. 14, 1970, as amended at 42 FR 20474, Apr. 20, 1977]

EXEMPTION CERTIFICATES

§ 908.120 Exemptions from size regulation.

(a) *Application to be filed.* Each grower entitled to be exempted from the provisions of any size regulation established by the Secretary may file with the committee an application for an exemption certificate on V.O.A.C. Form No. 11. Such application must be received by the committee not later than Wednesday preceding the regular weekly meeting of the committee at which action is to be taken thereon and shall contain the following information: (1) Name and address of applicant; (2) location of oranges which the grower wishes covered by the exemption certificate; (3) the estimated sizes of the oranges contained in the applicant's groves and the percentage of each; (4) the size tests or other facts upon which such estimates are based, showing the number of oranges per tree tested and the total number of oranges tested per acre; (5) the number of cartons of oranges which applicant estimates will be needed to be exempted from size regulation to permit applicant to have handled the equivalent of the average that may be handled on behalf of all growers in the same prorate district; (6) the name of each packinghouse through which the applicant's oranges are to be handled.

(b) *Final dates for filing applications.* The committee may provide final dates for the filing of applications for exemptions from size regulations in each prorate district: *Provided,* That at least two weeks' advance notice shall be given to all handlers of the final date for each prorate district.

(c) *Investigation by Field Department.* Immediately upon receiving an application for an exemption certificate, the committee shall refer such application to its Field Department for investigation. The Field Department shall conduct an investigation and shall report its findings to the committee at its next regular meeting.

(d) *Determination by the committee.* If the committee determines that the information submitted in the application for an exemption certificate is inadequate, it may require the submission of additional information, including additional size tests. Based on all available information, the committee may authorize the issuance of a size exemption certificate, V.O.A.C. Form No. 12, which will permit the applicant to have as large a proportion of his oranges handled as the average proportion that will be handled for all other producers in the same prorate district. The percentage relation of a grower's restricted sizes to his total tree crop shall be used in determining the extent to which such grower is entitled to exemption from size regulation.

(e) *Exemption certificate.* If volume regulation is in effect at the time exemption certificates are issued, such exemption certificates may be used only to the extent that allotment has been issued under volume regulations for the oranges covered thereby. Exemption may be granted by issuing one or more exemption certificates and the initial certificate may be restricted to 75 percent of the estimated quantity to which a grower is entitled. Upon authorization of the committee, the manager shall issue to growers who have applied therefor, exemption certificates which shall contain the following information: (1) Name and address of person to whom issued; (2) location of grove or groves; (3) quantity of oranges of each size permitted to be handled without regard to the existing size regulation; and (4) period covered by the exemption certificate. The exemption certificate shall be issued in quadruplicate, one copy to be retained by the committee, and three copies to be issued to the grower. The grower shall endorse and turn over to the packinghouse, through which the oranges are to be handled, two copies. The packinghouse shall sign and immediately mail one copy to the committee. Exemption certificates issued hereunder may be used only for the handling of the oranges covered by the certificate. Each certificate shall be valid at any time during which the

size regulation remains in effect and, subject to the handler's allotment under volume regulation, the total quantity of the oranges covered thereby, or any part thereof, may be shipped at one time.

[19 FR 3216, June 2, 1954, as amended at 24 FR 3623, May 6, 1959. Redesignated at 26 FR 12751, Dec. 30, 1961, and amended at 33 FR 3167, Feb. 20, 1968]

ORANGES NOT SUBJECT TO REGULATION

§ 908.130 Exemptions under § 908.67.

The exemptions authorized by § 908.67 apply only to oranges handled by the initial handler direct for the purpose stated. Except as specifically provided in this subpart, any transaction wherein the oranges are handled by a third party, such party is not entitled to exemption.

[42 FR 20474, Apr. 20, 1977]

§ 908.131 By-product oranges.

(a) *Notice to committee.* No person shall handle oranges for commercial processing into by-products unless (1) such oranges are, or have been, handled pursuant to an allotment therefor; or (2) the processor is an approved by-product manufacturer, as prescribed in paragraph (b) of this section.

(b) *Approved by-products manufacturer.* (1) Any person who desires to acquire oranges as an approved by-products manufacturer for commercial processing into by-products exempt from regulation pursuant to § 908.67(b) must first apply to and obtain approval from the committee. Applicants for such exemption shall submit to the committee an application on V.O.A.C. Form No. 14 containing the following information: (i) The name and address of applicant; (ii) the proposed type of by-product(s) to be made or derived from oranges; (iii) the approximate quantity of oranges to be used annually; (iv) a description of the by-product(s) to be manufactured and the equipment to be used in manufacturing such by-products and the capacity per hour thereof; (v) the intended disposition of unused components of the oranges; (vi) a statement describing the manner in which the by-product(s) will be sold, whether at wholesale, retail, or both; (vii) a statement whether orange juice will be pasteurized and, if so, a description of the manner in which such pasteurization will be accomplished; (viii) the location of the plant(s); (ix) a statement that the exempt oranges acquired hereunder will be used for by-products manufacturing only and will not be resold or disposed of in fresh fruit channels; and (x) an agreement to submit such reports as may be required by the committee.

(2) Such application shall be referred to the committee's Compliance Department for investigation and reported back to the committee. The committee shall approve the application if, in its opinion: (i) The applicant's principal occupation is manufacturing food by-products, including orange by-products, except those applicants providing oranges or by-products for animal feeding purposes; (ii) all orange by-products, including juice, will be sold at wholesale only or will be used for animal feeding; (iii) the applicant agrees to submit such reports as may be required by the committee; (iv) the oranges obtained under this exemption will not be resold or disposed of in fresh fruit channels; and (v) approval of the application will not be contrary to the purposes of this part. If an application is denied, the committee shall within a reasonable time inform the applicant in writing of the facts and reasons therefor, and afford the applicant an opportunity, either orally or in writing, to present opposing facts and reasons. If the application is approved, the applicant's name shall be placed on the list of approved by-products manufacturers. The applicant shall be informed of the committee's determination in a timely manner.

(3) A commercial processor on the list of approved by-products manufacturers who: (i) Fails to commercially process oranges into by-products for a period of one year or more; (ii) sells or otherwise disposes of any orange by-product(s) manufactured from oranges at the retail level other than for animal feeding; (iii) sells or otherwise disposes of oranges obtained under this exemption in fresh fruit channels; (iv) fails or refuses to submit reports

required by the committee, may be determined by the committee to be ineligible to acquire oranges under this exemption and the committee may suspend or remove its name from the list of approved by-products manufacturers for such time as the committee deems appropriate in the circumstances. Prior to making such determination the committee shall give the processor reasonable advance notice in writing of its intention, the facts and reasons therefor, and afford the processor an opportunity, either orally or in writing, to present opposing facts and reasons. After a processor's name has been removed from the list of approved by-products manufacturers, it must submit a new application and secure approval of the committee in order to acquire exempt oranges pursuant to § 908.67(b).

(c) *Certificate by by-product manufacturers.* Upon request, each approved by-product manufacturer shall submit to the committee, on forms prescribed by the committee, on or before the 10th day of each month, a report of the Valencia oranges used during the preceding calendar month. Each report shall contain a certification to the United States Department of Agriculture and to the committee as to the truthfulness of the information shown therein.

(d) *Orange diversion report.* Each handler shall, with respect to each quantity of oranges he diverts for commercial processing into by-products or to charitable organizations, or eliminates from the channels of human consumption, report to the committee, on V.O.A.C. Form No. 15: (1) Name and address of the by-products plant or charitable organization to which the oranges where diverted; (2) the prorate district in which the oranges were produced; (3) the respective quantities of oranges in terms of the number of cartons (i) diverted to by-products, (ii) diverted to charitable organizations, and (iii) eliminated; (4) net weight of such oranges; and (5) if oranges were eliminated, the place and means of elimination. This report shall be prepared in quadruplicate. One copy signed by the handler shall be submitted to the committee promptly upon the diversion or elimination of the oranges covered thereby. One copy may be retained by the handler, and two copies shall be forwarded by the handler to the by-product manufacturer or charitable organization with the understanding that the by-product manufacturer or charitable organization will record, on one copy thereof, the actual net weight or number of cartons of oranges received, and forward such copy to the committee.

[19 FR 3216, June 2, 1954, as amended at 24 FR 3623, May 6, 1959. Redesignated at 26 FR 12751, Dec. 30, 1961; 46 FR 42839, Aug. 25, 1981]

§ 908.132 Export of oranges.

(a) *Oranges exported.* Except for the handling of oranges to an exporter for export to Mexico as provided in this section, any person who packs oranges and forwards the oranges directly to the destination for export, and who shows proof of export by submitting to the committee a copy of a signed dock receipt, a signed car bill of lading or other documents acceptable to the committee covering the shipment of the oranges to export, no later than 48 hours following the shipment, shall be considered to have exported the oranges within the meaning of § 908.67.

(b) *Handling oranges to an exporter for export to Mexico.* No person shall be eligible for an exemption under § 908.67 for handling oranges to an exporter for export to Mexico unless the exporter is approved as prescribed in paragraph (c) of this section.

(c) *Approved exporter to Mexico.* Any person who desires to become an approved exporter eligible to handle exempt oranges to Mexico shall submit to the committee an application on V.O.A.C. Form No. 36 which shall contain the following information: (1) The name and home address of the applicant; (2) the applicant's business address; (3) the applicant's permit, identification, or border crossing number; (4) the approximate quantity of oranges to be handled each week for export to Mexico; (5) a certification to the United States and to the Valencia Orange Administrative Committee that the oranges obtained for export to Mexico will not be placed

in the current of commerce in the continental United States, Canada, or Alaska; and (6) an agreement that the applicant will deposit with the U.S. Customs Inspector at the Mexican border within 36 hours after handling oranges for export to Mexico by purchase or otherwise, a copy of V.O.A.C. Form No. 16, Certificate of Purchase of Oranges For Export to Mexico, or file the certificate with the committee as provided in paragraph (d) of this section; and based upon information provided in the application, the investigation thereof by the committee staff, and other available information the committee shall approve or disapprove the application and notify the applicant accordingly. If the application is approved, the applicant's name shall be placed on the approved list of exporters to Mexico. Should the applicant at any time fail to abide by the terms of his agreement with the committee, his name shall be removed from the list of approved exporters to Mexico.

(d) *Mexican export certificate.* For each export shipment of oranges to Mexico, the handler shall obtain from the purchaser at time of delivery of such oranges, a certification on V.O.A.C. Form No. 16 to the United States Department of Agriculture and the Valencia Orange Administrative Committee that such oranges are to be exported to Mexico and will not reenter the continental United States or be reshipped to Canada or Alaska. The certificate shall state the date of shipment, the quantity of oranges included in the shipment, the truck license number or other identification of the carrier of the oranges, the purchaser's permit, identification, or border crossing number, the name of the packinghouse from which the oranges were purchased, the destination of the oranges, and the signature and address of the purchaser. The certificate shall also be signed by the handler or his authorized representative and the original shall be forwarded by the handler to the committee at the close of each day's business. The duplicate and triplicate copy shall accompany the oranges, and within 36 hours of the time they are purchased, the purchaser shall deposit the duplicate copy with the U.S. Customs Inspector at the Mexican Border, or, in lieu thereof, shall mail the duplicate copy to the committee in an envelope mailed from Mexico.

[42 FR 20474, Apr. 4, 1977]

§ 908.133 Other exemptions.

(a) Any producer whose principal occupation is not that of food distribution may apply to the committee on V.O.A.C. Form No. 18 for an exemption to sell oranges produced by him direct to consumers without regard to volume or size regulation or both. The application shall show: (1) The name and address of the producer; (2) the location of the producer's grove, the acreage in the grove, and the estimated production of the grove; (3) the estimated quantity of oranges which producer desires to sell to consumers under the exemption; (4) the location at which producer will sell his oranges to consumers, and the name of the facility employed in the sale, if any; (5) the name of the person or persons who will sell the oranges, and if the oranges are to be sold by a person other than the applicant, the nature of the selling agreement between such person and the applicant including information as to the extent to which applicant has control over the sale of the oranges; and (6) evidence that his principal occupation is not that of food distribution. The committee shall determine the extent to which the application should be granted on the basis of its evaluation of the information provided in the application, other available information, and its judgment as to the manner in which granting the application will effect the purposes of the marketing order. In making such determination, the committee shall consider: (i) The extent to which other handlers will be adversely affected in the marketing of their oranges in regular channels, if the exemption is granted; and (ii) the degree of risk that the oranges covered by the exemption will re-enter nonexempted channels, if the exemption is granted. The producer shall be notified in writing of the action taken by the committee on his application. Upon approval of the application, the producer may

sell oranges produced by him direct to a consumer without regard to the restrictions of volume or size or both, prescribed pursuant to Order No. 908. This exemption shall not apply to any sale of oranges made at a packinghouse.

(b) Any handler who desires to furnish at his own expense oranges controlled by him for exhibits or displays without regard to volume and size regulations then in effect shall make written application to the committee for exemption so to handle such oranges. Such application shall show: (1) The location and duration of the exhibit or display; (2) the estimated quantity of oranges to be so furnished for use in the exhibit or display; and (3) the disposition to be made of such oranges upon termination of the exhibit or display. The handler shall be notified in writing of the action taken by the committee on his application. Upon approval of the application, the handler may furnish such oranges at his own expense for the exhibit or display without regard to the then current volume and size regulations. This exemption shall not apply to sales of oranges made at a packinghouse.

(c) Any handler who desires to furnish, at his own expense, oranges for gifts, exhibits, or for experimental or research work by a university or other similar research institution, which does not involve the sale of such oranges in fresh fruit channels, may do so without regard to volume and size regulations then in effect. Any such oranges shall be reported to the committee on V.O.A.C. Form No. 4, Report of Weekly Orange Movement, and shall show the quantity of oranges furnished, and the name and address of the university or other research institution.

[19 FR 3216, June 2, 1954, as amended at 21 FR 6084, Aug. 15, 1956. Redesignated at 26 FR 12751, Dec. 30, 1961, and amended at 42 FR 20475, Apr. 20, 1977]

§ 908.139 Conversion factors.

Unless otherwise specified in the particular report form, information with respect to volume of oranges required to be submitted under this part shall be reported in terms of cartons. For shipments of oranges, other than in cartons, the volume of such oranges shall be converted to cartons on the basis of 37½ pounds net weight per carton: *Provided,* That the following conversion factors may be used:

(a) One standard 2-compartment California wood box, loose packed, equals 1.6 cartons.

(b) Twenty 2-pound bags equal 1 carton.

(c) Thirteen 3-pound bags equal 1 carton.

(d) Ten 4-pound bags equal 1 carton.

(e) Eight 5-pound bags equal 1 carton.

(f) Seven 6-pound bags equal 1 carton.

(g) Six 7-pound bags equal 1 carton.

(h) Five 8-pound bags equal 1 carton.

[27 FR 3549, Apr. 13, 1962, as amended at 35 FR 459, Jan. 14, 1970]

§ 908.140 Weekly reports.

Weekly reports on V.O.A.C. Form No. 4 shall be submitted by all handlers to the committee each Friday shall contain the information set forth in § 908.70, and shall include the name of the boat used in connection with export shipments.

[19 FR 3216, June 2, 1954. Redesignated at 26 FR 12751, Dec. 30, 1961, and amended at 33 FR 3167, Feb. 20, 1968]

§ 908.141 Manifest reports.

Within 24 hours after shipment is made by a handler, he shall submit to the committee on V.O.A.C. Form No. 3, a manifest report of all oranges so shipped. Such report shall show the rail car number or the serial number of the Certificate of Assignment of Allotment for each shipment, together with the quantity by sizes per carton, of each shipment made within the United States or to Canada, or to Alaska. If the shipment was made under a size regulation and was covered by an exemption certificate, the certificate number shall also be shown. All manifest reports shall be certified by the handler to the United States Department of Agriculture and the Valencia Orange Administrative Committee as to the correctness of the information shown thereon. If the shipment was by rail and contained oranges not packed in cartons or in bags,

the handler shall file with the committee, no later than 10 days following the shipment, information satisfactory to the committee which substantiates and which shows the derivation of the amount of equivalent cartons, by sizes, contained in the shipment and reported on the manifest report.

[19 FR 3216, June 2, 1954, as amended at 24 FR 3623, May 6, 1959. Redesignated at 26 FR 12751, Dec. 30, 1961, and amended at 42 FR 20475, Apr. 20, 1977]

§ 908.142 Other reports.

(a) Each handler shall make available to the committee's field department representative, upon request, information as to the quantity of oranges which has been harvested from all groves or portions thereof under such handler's control.

(b) Upon request, each handler shall submit to the committee a completed V.O.A.C. Form No. 29—Inventory Report of Valencia Oranges Controlled, showing therein: The specified inventory date; variety; field boxes of oranges picked to date; estimated number of field boxes remaining to be picked; field boxes of oranges in the packinghouse; cartons of oranges loaded on trucks and rail cars for Friday shipment; number of cartons of oranges in storage; number of cartons of oranges on the packinghouse floor; loose oranges on hand (converted to cartons); oranges on hand for products (converted to cartons); and the date when the handler plans to complete his orange picking operations. The report shall be signed by the handler or by his authorized representative.

[32 FR 7840, May 30, 1967, as amended at 33 FR 3167, Feb. 20, 1968]

NOTE: After January 1, 1979, "Budget of Expenses and Rate of Assessment" regulations (e.g. sections .200 through .299) and "Handling" regulations (e.g. sections .300 through .999) which are in effect for a year or less, will not be carried in the Code of Federal Regulations. For FEDERAL REGISTER citations affecting these regulations, see the "List of CFR Sections Affected" in this volume.

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AUTHORITY: Secs. 1-19, 48 Stat. 31, as amended; 7 U.S.C. 601-674.

Subpart—Order Regulating Handling

SOURCE: 24 FR 659, Jan. 30, 1959, unless otherwise noted. Redesignated at 26 FR 12751, Dec. 30, 1961.

DEFINITIONS

§ 910.1 Secretary.

"Secretary" means the Secretary of Agriculture of the United States of America.

§ 910.2 Act.

"Act" means Public Act No. 10, 73d Congress (May 12, 1933), as amended and as reenacted and amended by the Agricultural Marketing Agreement Act of 1937, as amended (48 Stat. 31, as amended; 7 U.S.C. 601 et seq.; 68 Stat. 906, 1047).

§ 910.3 Person.

"Person" means an individual, partnership, corporation, association, legal representative, or any organized group of individuals.

§ 910.4 Lemons.

"Lemons" means all varieties of lemons grown in the production area.

§ 910.5 Grower and producer.

"Grower" and "producer" are synonymous and mean any person who produces lemons for market.

§ 910.6 Handler.

"Handler" means any person (except a common carrier of lemons owned by another person), who handles lemons in fresh form.

§ 910.7 Handle.

"Handle" means to buy, sell, consign, transport, or ship lemons (except as a common or contract carrier of lemons owned by another person), or in any other way to place lemons, in the current of commerce between the State of California and any point outside thereof in the continental United States, Alaska, or Canada, or within the State of California, or between the State of Arizona and any point outside thereof in the continental United States, Alaska, or Canada, or within the State of Arizona. The term

"handle" does not include (a) the sale of lemons on the tree; (b) the transportation of lemons to a packinghouse within the production area for the purpose of having such lemons prepared for market; or (c) the transportation of lemons to a storage within the production area under such rules and regulations as the committee, with the approval of the Secretary, may prescribe.

§ 910.8 Carload.

"Carload" means a quantity of lemons equivalent to 930 cartons of lemons, or such other quantity of lemons as may be established by the committee with the approval of the Secretary.

§ 910.9 Carton.

"Carton" means standard container number 58 as defined in § 43615 of the Agricultural Code of California, as amended, of a capacity of approximately 38 pounds of lemons, or such other container and capacity as may be established by the committee, with the approval of the Secretary, or the equivalent thereof.

[36 FR 9062, May 19, 1971]

§ 910.10 Fiscal year.

"Fiscal year" means the twelve-month period beginning on August 1 of each year and ending July 31 of the following year, except that the fiscal year ending July 31, 1971, shall begin on November 1, 1970.

[36 FR 9062, May 19, 1971]

§ 910.11 Committee.

"Committee" means the Lemon Administrative Committee established pursuant to § 910.20.

§ 910.13 Central marketing organization.

"Central marketing organization" means any organization which markets the lemons for more than one handler pursuant to a written contract between such organization and each such handler.

§ 910.14 Tree crop.

"Tree crop" means the total quantity of lemons on the trees as determined by the committee.

§ 910.15 Production area.

"Production area" means the State of Arizona and that part of the State of California south of a line drawn due east and west through the post office in Turlock, California.

[27 FR 8347, Nov. 22, 1962]

Administrative Body

§ 910.20 Establishment and membership.

(a) There is hereby established a Lemon Administrative Committee consisting of 13 members. For each member there shall be an alternate member, and for each grower member an additional alternate, and the provisions of §§ 910.20 through 910.26, unless they specifically provide otherwise, shall apply to members and alternate members and additional alternates in like manner. Further, references to "member" therein shall be deemed to include alternates and additional alternates unless the context indicates otherwise. Eight of the members shall be growers and shall be referred to in this part as "grower" members; four of the members shall be handlers or employees of handlers or employees of central marketing organizations and shall be referred to in this part as "handler" members. One member of the committee shall be a person who shall not be a grower or handler, or an employee, agent, or representative of a grower or handler (other than an educational institution which is a grower or handler), or of a central marketing organization. Such person shall be referred to in this part as a "nonindustry" member.

(b) Except as otherwise provided pursuant to § 910.22(h), the grower members of the committee shall be nominated, by prorate district and group, in accordance with the following schedule:

	Co-op more than 60 percent	Other co-ops	Independents
District 1 (1)	1	0	0
District 2 (4)	2	2	0
District 3 (3)	1	1	1

(c) Each alternate grower member and each additional alternate grower member shall be from the same group as the member but need not be from the same district.

[36 FR 9062, May 19, 1971]

§ 910.21 Term of office.

The term of office of committee members shall be a period of 2 years beginning on August 1 of each even-numbered year, except that the term ending on July 31, 1972, shall begin on the date designated by the Secretary. Members shall serve in such capacities for the portion of the term of office for which they are selected and qualify and until their respective successors are selected and have qualified.

[36 FR 9062, May 19, 1971]

§ 910.22 Nominations.

(a) The time and manner of nominating members of the Lemon Administrative Committee shall be prescribed by the Secretary.

(b) Any cooperative marketing organization or the growers affiliated therewith which markets more than 60 percent of the total volume of lemons during the fiscal year during which nominations for members are submitted shall nominate, in conformity with § 910.20, four grower members and two handler members.

(c) All cooperative marketing organizations or the growers affiliated therewith which market lemons and which are not qualified under paragraph (b) of this section shall nominate, in conformity with § 910.20, three grower members and one handler member.

(d) All growers of the group identified as independents in § 910.20 who are not affiliated with a cooperative marketing organization which markets lemons shall nominate, in conformity with § 910.20, one grower member and one handler member.

(e) When voting for nominees each grower shall be entitled to one vote only which shall be cast on behalf of himself his agents, subsidiaries, affiliates, and representatives. Votes of marketing organizations voting pursuant to paragraph (c) of this section shall be weighted in accordance with the volume of lemons handled during the current fiscal year to the end of the month preceding the month in which such nominations are made.

(f) The members of the Lemon Administrative Committee selected by the Secretary pursuant to § 910.23 shall, by concurring vote of at least seven members, nominate the nonindustry member.

(g) The grower members nominated under paragraphs (b), (c), and (d) of this section shall be in such number and from such districts and groups as provided pursuant to § 910.20.

(h) The Secretary, upon recommendation of the Lemon Administrative Committee, or other information, may reapportion the number of grower members or handler members, or both, to be nominated pursuant to § 910.22 and may realign the number of grower members in any district. Any such change shall be based, insofar as practicable, upon the proportionate amounts of lemons handled by the respective groups and production within any district: *Provided*, That each district shall be entitled to at least one grower member and each marketing group described in § 910.22 shall be entitled to at least one handler member and one grower member, and no district shall have more than four grower members.

[36 FR 9062, May 19, 1971]

§ 910.23 Selection.

The Secretary shall select members of the Lemon Administrative Committee from persons nominated pursuant to § 910.22 or, at his discretion, from other qualified persons.

[36 FR 9063, May 19, 1971]

§ 910.24 Failure to nominate.

In the event nominations are not made pursuant to, and within the time specified in, § 910.22, the Secretary may select the members and alternate members of the committee, without regard to nominations, which selection shall be made on the basis of the representation provided for in § 910.23.

§ 910.25 Acceptance.

Any person selected by the Secretary as a member or as an alternate

member of the committee shall qualify by filing a written acceptance with the Secretary within ten days after being notified of such selection.

§ 910.26 Vacancies.

To fill any vacancy occasioned by the failure of any person selected as a member or as an alternate member of the committee to qualify, or in the event of the death, removal, resignation, or disqualification of any qualified member or alternate member, a successor for his unexpired term shall be selected by the Secretary from nominations made in the manner specified in § 910.22. If the names of nominees to fill any such vacancy are not made available to the Secretary within fifteen days after such vacancy occurs, the Secretary may fill such vacancy without regard to nominations, which selection shall be made on the basis of the representation provided for in § 910.23.

§ 910.27 Alternate members.

An alternate member of the committee shall act in the place and stead of the member for whom he is an alternate, during such member's absence, unless such member has designated another alternate member, who has been nominated by the same group which nominated the member; in which event, the alternate member so designated shall serve in the absence of the member who designated him. If another alternate member is not so designated by a grower member, his alternate shall act for the member and, in the absence of such alternate, the additional alternate shall so act. In the event of the death, removal, resignation, or disqualificatiion of a member, his alternate shall act for him until a successor of such member is selected and has qualified.

[24 FR 659, Jan. 30, 1959. Redesignated at 26 FR 12751, Dec. 30, 1961, and amended at 36 FR 9063, May 19, 1971]

§ 910.28 Procedure.

(a) Seven members of the committee shall constitute a quorum and any action of the committee shall require seven concurring votes.

(b) The committee may vote by telegraph, telephone, or other means of communication, and any votes so cast shall be confirmed promptly in writing. If an assembled meeting is held, all votes shall be cast in person.

[24 FR 659, Jan. 30, 1959. Redesignated at 26 FR 12751, Dec. 30, 1961, and amended at 36 FR 9063, May 19, 1971]

§ 910.29 Expenses and compensation.

The members of the committee, and their respective alternates when acting as members, or when in attendance pursuant to committee authorization, shall be reimbursed for expenses necessarily incurred by them in the performance of their duties and in the exercise of their powers under § 910.30, and shall receive compensation at a rate to be determined by the committee, which rate shall not exceed $25 for each day, or portion thereof, spent in attending meetings of the committee.

[36 FR 9063, May 19, 1971]

§ 910.30 Powers.

The committee shall have the following powers:

(a) To administer the provisions of this subpart in accordance with its terms;

(b) To make rules and regulations to effectuate the terms and provisions of this subpart;

(c) To receive, investigate, and report to the Secretary complaints of violations of the provisions of this subpart; and

(d) To recommend to the Secretary amendments to this subpart.

§ 910.31 Duties.

It shall be the duty of the committee: (a) To act as intermediary between the Secretary and any grower or handler;

(b) To keep minutes, books, and records which will clearly reflect all of the acts and transactions of the committee, including all transactions and operations pursuant to §§ 910.50 through 910.62. Such minutes, books, and records shall be subject to examination at any time by the Secretary;

(c) To investigate the growing, shipping, and marketing conditions with respect to lemons and to assemble data in connection therewith;

(d) To furnish to the Secretary such available information as he may request;

(e) To select a chairman and such other officers as may be necessary, and to adopt such rules and regulations for the conduct of its business as it may deem advisable;

(f) At the beginning of each fiscal year, to submit to the Secretary a budget of its expenses for such fiscal year, together with a report thereon;

(g) To cause the books of the committee to be audited by a competent accountant at least once each fiscal year, and at such other times as the committee may deem necessary or as the Secretary may request. The report of such audit shall show the receipt and expenditure of funds collected pursuant to this subpart, and a copy of each such report shall be furnished to the Secretary;

(h) To appoint such employees, agents, and representatives as it may deem necessary, and to determine the salaries and define the duties of such persons;

(i) Subject to the continuing right of the Secretary to take such other action as may be necessary, to appear in and defend any legal proceeding against the committee, its members, or alternate members (whether any such proceeding is against them as individuals or as members or alternate members of the committee), or any officers or employees of such committee, arising out of the exercise of their powers or the performance of their duties pursuant to the provisions of this subpart; and the action of the committee in connection with any such defense shall be binding upon all the members and alternate members of the committee;

(j) To prepare and mail as soon as practicable after the close of each fiscal year an annual report to the Secretary and to each handler and grower who makes a request therefor, which report shall cover the operations of the previous fiscal year and contain at least a complete review by prorate districts of (1) the weekly regulatory operations and lemon movement during the fiscal year as conducted under the marketing policy established pursuant to § 910.50, and (2) the data upon which prorate bases are determined; and

(k) With the approval of the Secretary, to reapportion pursuant to § 910.22(h) the number of members on the Lemon Administrative Committee who are nominated pursuant to § 910.22.

[24 FR 659, Jan. 30, 1959. Redesignated at 26 FR 12751, Dec. 30, 1961, and amended at 36 FR 9063, May 19, 1971]

§ 910.32 Obligation.

Upon the removal or expiration of the term of office of any member of the committee, such member shall account for all receipts and disbursements and deliver all property and funds, together with all books and records, in his possession, to his successor in office, and shall execute such assignments and other instruments as may be necessary or appropriate to vest in such successor full title to all of the property, funds, and claims vested in such member pursuant to this subpart.

§ 910.33 Marketing research and development.

The committee, with the approval of the Secretary, may establish or provide for the establishment of marketing research and development projects designed to assist, improve, or promote the marketing, distribution, and consumption of lemons; the expenses of such projects to be paid from funds collected pursuant to this part.

[27 FR 8347, Aug. 22, 1962]

Expenses and Assessments

§ 910.40 Expenses.

The committee is authorized to incur such expenses as the Secretary finds are reasonable and likely to be incurred to carry out the functions of the committee under this subpart during each fiscal year. The funds to cover such expenses shall be acquired by levying assessments as provided in § 910.41.

[36 FR 9063, May 19, 1971]

§ 910.41 Assessments.

(a) Each handler who first handles lemons shall, with respect to the lemons so handled by him, pay to the committee upon demand, such handler's pro rata share of the expenses which the Secretary finds are reasonable and likely to be incurred by the committee for its maintenance and functioning, during each fiscal year, including the accumulation and maintenance of a reserve fund equal to approximately one-half of 1 fiscal year's expenses. Such handler's pro rata share of such expenses shall be equal to the ratio between the total quantity of lemons handled by him as the first handler thereof, during the applicable fiscal year, and the total quantity of lemons handled by all handlers as the first handlers thereof, during the same fiscal year. The Secretary shall fix the rate of assessment to be paid by such handlers. The payment of assessments for the maintenance and functioning of the committee may be required under this subpart throughout the period it is in effect, irrespective of whether particular provisions thereof are suspended or become inoperative. If a handler does not pay his assessment within the time prescribed by the committee, the assessment may be subject to an interest charge at a rate prescribed by the committee with the approval of the Secretary.

(b) At any time during or after a fiscal year, the Secretary may increase the rate of assessment in order to secure sufficient funds to cover any later finding by the Secretary relative to the expenses of the committee. Such increase shall be applicable to all lemons handled during the given fiscal year. In order to provide funds to carry out the functions of the committee, handlers may make advance payment of assessments.

[24 FR 659, Jan. 30, 1959. Redesignated at 26 FR 12751, Dec. 30, 1961, and amended at 36 FR 9063, May 19, 1971]

§ 910.42 Accounting.

(a) If, at the end of the fiscal year, the assessments collected are in excess of expenses incurred, such excess shall be accounted for in accordance with one of the following:

(1) If such excess is not retained in a reserve, as provided in paragraph (a)(2) of this section, or used to defray necessary expenses of liquidation, it shall be refunded proportionately to the persons from whom it was collected: *Provided,* That any sum paid by a person in excess of his pro rata share of the expenses during any fiscal year may be applied by the committee at the end of such fiscal year to any outstanding obligations due the committee from such person.

(2) The committee, with the approval of the Secretary, may establish and maintain during one or more fiscal years an operational monetary reserve in an amount not to exceed approximately one-half of a fiscal year's operational expenses. Upon approval of the Secretary, funds in such reserve shall be available for use by the committee (i) for all expenses authorized pursuant to § 910.40 and (ii) to cover necessary expenses of liquidation in the event of termination of this part. Upon termination of this part, any funds not required to defray the necessary expenses of liquidation shall be disposed of in such manner as the Secretary may determine to be appropriate: *Provided,* That to the extent practical, such funds shall be returned pro rata to the persons from whom such funds were collected.

(b) The committee may, with the approval of the Secretary, maintain in its own name or in the name of its members a suit against any handler for the collection of such handler's pro rata share of the expenses of the committee.

[24 FR 659, Jan. 30, 1959. Redesignated at 26 FR 12751, Dec. 30, 1961, and amended at 36 FR 9063, May 19, 1971]

§ 910.43 Funds.

All funds received by the committee pursuant to any provisions of this subpart shall be used solely for the purposes specified in this subpart and shall be accounted for in the manner provided in this subpart. The Secretary may, at any time, require the committee and its members to account for all receipts and disbursements.

REGULATION

§ 910.50 Marketing policy.

Each year not later than August 15 of the fiscal year (or such later date as the committee may establish with the approval of the Secretary) the committee shall hold a marketing policy meeting and shall thereafter submit to the Secretary its marketing policy for such fiscal year, to continue in force until revised, or superseded by the adoption of a new marketing policy. The marketing policy shall contain the following information: (a) The available supplies of lemons in each prorate district, including estimated quality and composition of sizes; (b) the estimated utilization of the crop, showing the quantity and percentages of the crop that will be marketed in domestic, export, and byproduct channels, together with quantities otherwise to be disposed of; (c) a schedule of estimated weekly shipments to be recommended to the Secretary during the fiscal year; (d) level and trend of consumer income; (e) estimated supplies of competitive citrus commodities; and (f) any other pertinent factors bearing on the marketing of lemons. In the event that it becomes advisable to substantially modify the marketing policy the committee shall submit to the Secretary a revised marketing policy or a new marketing policy setting forth the information as required in this section.

[36 FR 9064, May 19, 1971]

§ 910.51 Recommendations for regulation.

(a) It shall be the duty of the committee to investigate the supply and demand conditions for lemons. Whenever the committee finds that such conditions make it advisable to regulate, pursuant to § 910.52, the handling of lemons during any week of the fiscal year, it shall recommend to the Secretary the quantity of lemons which it deems advisable to be handled during such week. Thereafter the committee shall promptly report such findings and recommendations, together with supporting information, to the Secretary.

(b) In making such recommendations, the committee shall give due consideration to the following factors: (1) Quantity of lemons in storage; (2) lemons on hand in, and en route to, the principal markets; (3) trend in consumer income; (4) present and predicted weather conditions; (5) present and prospective prices of lemons; and (6) other relevant factors.

(c) At any time during a week for which the Secretary, pursuant to § 910.52, has fixed the quantity of lemons which may be handled during such week, the committee may, if such action is deemed advisable, recommend to the Secretary that such quantity be increased for such week. Any such recommendation, together with the committee's reasons for such recommendation, shall be submitted promptly to the Secretary.

[24 FR 659, Jan. 30, 1959. Redesignated at 26 FR 12751, Dec. 30, 1961, and amended at 27 FR 8347, Aug. 22, 1962; 36 FR 9064, May 19, 1971]

§ 910.52 Issuance of regulations.

Whenever the Secretary shall find, from the recommendations and information submitted by the committee, or from other available information, that to limit the quantity of lemons which may be handled during a specified week, will tend to effectuate the declared policy of the act, he shall fix such a quantity of lemons which may be handled during such a week, which quantity may, at any time during such week, be increased by the Secretary.

Such regulation may be made effective, as authorized by the act, irrespective of whether the season average price for lemons is in excess of the parity price specified therefor in the act. The committee shall be informed immediately of any such regulation issued by the Secretary and shall promptly give adequate notice thereof to handlers.

[24 FR 659, Jan. 30, 1959. Redesignated at 26 FR 12751, Dec. 30, 1961, and amended at 36 FR 9064, May 19, 1971]

§ 910.53 Prorate bases.

(a) As used in this section, "handler" means the person who is, or proposes to be, the person who handles lemons as the first handler thereof: And each such handler shall submit to the committee, at such time and in such

manner as may be designated by the committee, and upon forms made available by it, a written application for a prorate base and for allotments as provided in this section and § 910.56, such application to be substantiated by such information as the committee may require.

(b) The committee shall determine the accuracy of the information submitted pursuant to this section. Whenever the committee finds that there is an error, omission, or inaccuracy in any such information, it shall correct the same and may make such compensating adjustments as are appropriate or necessary, and shall give the person who submitted the information a reasonable opportunity to discuss with the committee the factors considered in making the correction.

(c) Each week the committee shall compute a prorate base or bases for each handler who has made application in accordance with the provisions of this section.

(d) Each prorate base for a handler of lemons shall be computed as follows:

(1) Compute the total quantity of lemons grown in a particular prorate district which has been picked and delivered to the handler, hereinafter at times referred to as "pick," during the applicable prorate base period immediately preceding the week in which the prorate base is computed. The applicable number of weeks in the prorate base period for a prorate district shall be as provided in paragraph (e) of this section. Such quantities of lemons picked and so delivered in such period shall then be divided by the number of weeks in the applicable prorate base period for the purpose of arriving at an average weekly pick.

(2) For any handler of lemons produced in District 1 or 3, for the initial number of consecutive weeks after the beginning of such handler's new season, equal to the number of weeks in the applicable prorate base period, the average weekly pick computed for the first week of picks and succeeding weeks shall be computed as follows:

(i) The total quantity picked and delivered to the handler in the first week;

(ii) The total quantity picked and delivered to the handler in the first and second weeks divided by 2.

(iii) The total quantity picked and delivered to the handler in the first 3 weeks and succeeding weeks (until such number of weeks equals the total weeks in such handler's applicable prorate base period) divided by the total weeks so included.

On the basis of the computation of the handler's average weekly pick, the committee shall fix a prorate base for each handler who is entitled thereto. Each such prorate base shall represent the ratio between the average weekly pick for each applicant handler and the total of such average weekly picks for all applicant handlers.

(e) In recognition of the differences between the several prorate districts in production and marketing conditions, the number of weeks in a prorate base period shall be specified by district and such respective base periods shall apply to lemons produced in such district, even though packed or handled in another district. Until changed in the manner provided in paragraph (h) of this section, the prorate base periods for the several districts shall be: District 1, 8 weeks; District 2, 16 weeks; and District 3, 4 weeks.

(f)(1) At the request of any handler of lemons produced in Districts 1 or 3, the committee shall adjust the average weekly pick of such handler by increasing it in the amount requested by the handler, but not exceeding 50 percent of such average. Such adjustment may be requested for any one or more weeks, not to exceed 8 weeks, during the period beginning with the first week of the initial prorate base period of a season for which such handler's average weekly pick is computed and ending not later than the middle week of such handler's picking season, as determined by the committee, based upon the historical picking performance of such handler. Any adjustment so added shall be deducted from such handler's average weekly picks as computed for subsequent weeks beginning in the week following such middle week and continuing in successive weeks to assure full repayment of all

prior upward adjustments. To the extent practicable, the amounts and sequences of repayments shall conform to the amounts and sequences in which upward adjustments were effected: *Provided, however,* That if the committee determines that an accelerated rate of repayment is necessary to effect full repayment, or the handler requests an accelerated rate of repayment, actions to effect repayment on such basis shall be in accordance with rules and regulations prescribed by the committee with the approval of the Secretary. Adjusted average weekly picks shall be used in lieu of the average weekly picks in computing the handler's prorate base as provided in paragraph (d) of this section. If the handler fails to receive sufficient allotment during the balance of the season to offset the upward adjustment, deductions from allotment received in the following season shall not be required to effect such repayment.

(2) Any handler of lemons produced in District 2 whose picks are interrupted for a period of 8 successive weeks or more, may upon application to the committee begin a new prorate base period with the initial week of picks after such interruption, and with the average weekly picks being computed in accordance with the applicable provisions of paragraph (d) of this section for the initial number of consecutive weeks in such new prorate base period. Any such handler upon application to the committee shall also receive adjustments of a character similar to those described in paragraph (f)(1) of this section subject to such conditions with respect to dates and periods of upward adjustment and payback as may be necessary or appropriate to avoid or mitigate undue hardship and to preserve equity among handlers.

(3) During the first 2 consecutive weeks beginning with the first picks of a new season for handlers of lemons produced in District 1 and for handlers of lemons produced in District 3 and with the first week of picks for a handler of lemons produced in District 2 authorized to begin a new prorate base period as provided in paragraph (f)(2) of this section, a handler may upon application to the committee be granted allotment to handle such lemons in anticipation of future allotments based on such picks, subject to such future allotments being reduced by the amount equal to such allotment.

(g) Any handler of lemons produced in any district under production or marketing conditions substantially differing from those generally prevailing in the same district, may apply to the committee for a different prorate base period, shorter or longer, than that specified for the district, but in no event less than 4 weeks nor more than 16 weeks. Such application shall be granted to the extent necessary or appropriate to give due recognition to such differences.

(h) The committee, with the approval of the Secretary, may change the number of weeks in the several time periods, the dates referred to in this § 910.53, and the percentage of adjustment specified in paragraph (f)(1) of this section; and in like manner may establish rules and regulations to effectuate the provisions of this section and may modify the method or manner of making the prescribed computations.

(i) Notwithstanding any other provisions of this section, the prorate base for any handler may be computed as follows:

(1) The prorate base as determined by paragraph (d) of this section, and by that portion of paragraph (f)(2) of this section pertaining to new prorate bases for District 2 handlers, shall be increased by the quantity of lemons certified under this paragraph by the committee. The quantity of lemons which may be so certified for a handler in each certification credit period may not exceed 25 percent of the total estimated tree crop controlled by such handler. The quantity of lemons so certified shall be credited to a handler's average weekly picks in equal amounts over the number of weeks in the credit period.

(2) The committee shall determine the type of fruit eligible for certification in each district to assure that all such fruit was produced during the then current fiscal year.

(3) The committee shall establish time periods during which certification may be approved in the various

districts, herein referred to as application periods. The committee shall also establish the number of weeks, herein referred to as the credit periods, over which certification will apply to handlers in each prorate district.

(4) Any handler utilizing the provisions of this paragraph shall be precluded from requesting upward adjustment as provided for in paragraphs (f)(1) and (f)(2) of this section.

(5) The committee shall establish procedures whereby any handler who has fruit certified may have such certification cancelled during a credit period.

(6) At the end of a credit period, certified fruit will not be included as picks to earn prorate base.

(7) The committee shall establish procedures to assure that any certified fruit over which control is transferred from one handler to another handler does not result in duplicate pick credit.

(8) The committee, with the approval of the Secretary, may establish rules and regulations to effectuate the provisions of this paragraph which may include modification of the method or manner of making certification computations.

[36 FR 9063, May 19, 1971, as amended at 47 FR 50197, Nov. 5, 1982]

§ 910.56 Allotments.

Whenever the Secretary has fixed the quantity of lemons which may be handled during any week, as aforesaid, the committee shall calculate the quantity of lemons which each handler may handle during such week. The said quantity shall be the allotment of each such handler and shall be in an amount equal to the product of the handler's prorate base and the quantity of lemons fixed by the Secretary as the quantity which may be handled during such week. The committee shall give adequate notice to each handler of the allotment computed for him pursuant to this section.

[24 FR 659, Jan. 30, 1959. Redesignated at 26 FR 12751, Dec. 30, 1961, and amended at 36 FR 9064, May 19, 1971]

§ 910.57 Overshipments.

During any week for which the Secretary has fixed the quantity of lemons which may be handled, each handler may handle, in addition to his allotment, an amount of lemons equivalent to twenty percent of said allotment, or one carload, whichever is the greater: *Provided,* That no such overshipment may be made by a handler if his allotment for such week is insufficient to offset his prior overshipments pursuant to this section: *And provided further,* That if allotment is forfeited with respect to lemons grown in any prorate district during such week, such forfeiture shall be used to reduce the amount of maximum permissible overshipments made during such week unless the forfeiting handler shall have made a bona fide and timely offer to the committee to lend his undershipment, and such forfeitures shall be first applied to permissible overshipments of handlers of lemons grown in the district with respect to which the forfeiture occurred and second to permissible overshipments of handlers of lemons grown in the other districts. Allocation of forfeiture credit to handlers who have overshipped shall be made in proportion to, but not in excess of, the quantity overshipped by each such handler. However, no handler who has overshipped more than the maximum permissible under this section shall participate in the credits allowed by this provision. The quantity of lemons handled in excess of a handler's allotment (but not exceeding the quantity permitted to be handled, as provided in this section) shall be deducted from his allotment for the next week in which the handling of lemons is regulated under this subpart. If such allotment is in an amount less than such excess quantity of lemons permitted to be handled by a handler, such quantity handled in excess of his allotment shall be deducted from succeeding weekly allotments until such excess has been entirely offset: *Provided,* That any overshipments outstanding at the end of a season in District 1 or 3 shall not be required to be offset by deductions from allotments issued in the following season. The committee, with the approval of the Secretary, shall adopt procedural rules and regulations to effectuate the provisions of this section.

[24 FR 659, Jan. 30, 1959. Redesignated at 26 FR 12751, Dec. 30, 1961, and amended at 27 FR 8347, Aug. 22, 1962; 36 FR 9064, May 19, 1971]

§ 910.58 Undershipments.

If a handler during any week handles a quantity of lemons less than his allotment for that week, such handler may, in addition to his allotment for the next succeeding week, handle only during such next succeeding week, a quantity of lemons equivalent to such undershipment.

§ 910.59 Allotment loans.

(a) A handler for whom a prorate base has been established may lend allotment to other handlers: *Provided,* That such loan is reported to the committee not later than 48 hours after the loan agreement has been entered into, and provides for repayment within 1 year of the date of the loan. If on the date of repayment specified in the loan agreement the borrower has insufficient allotment to repay such loan, he shall repay such loan as soon after such date as he has allotment available to him for that purpose.

(b) Allotments shall be loaned only during the week in which such allotments are issued and can be used by the borrower only during the week in which the loan is secured. Handlers securing repayment of allotment loans shall use such allotments only during the week in which the repayment is made.

(c) A handler desiring to loan all or part of his allotment to other handlers of lemons produced within the same district may do so direct or may request the committee to act in his behalf. A handler desiring to loan allotment to handlers of lemons produced in another district shall request the committee to arrange the loan on his behalf with the committee first offering the loan to handlers of lemons grown within the same district who have previously filed requests for such loans; and failing to so arrange may then offer the loan to handlers of lemons grown in other districts in an equitable manner.

(d) No allotment which has been loaned may again be loaned by the borrower, or by the lender after repayment thereof.

(e) The committee may, with the approval of the Secretary, adopt procedural rules and regulations to effectuate the provisions of this § 910.59.

[36 FR 9064, May 19, 1971]

§ 910.60 Transfer of allotment.

Allotments may be transferred from one handler to another only in accordance with the provisions of §§ 910.59 and 910.63.

§ 910.61 Priority of allotments.

During any week in which a handler receives an allotment, and has the right to handle a quantity of lemons in addition to the quantity represented by his allotment, by reason of (a) an undershipment of lemons pursuant to § 910.58; or (b) a transferred allotment, pursuant to § 910.60; or (c) the repayment of a loaned allotment, pursuant to § 910.59; or (d) an assignment of an allotment, pursuant to § 910.63; or (e) a borrowed allotment, pursuant to § 910.59, and such handler handles a quantity of lemons which is less than the total quantity of lemons which such handler may handle during such week, the amount of lemons handled shall first apply to such handler's current weekly allotment (or to that portion thereof which is not used pursuant to § 910.57, § 910.59, § 910.60, or § 910.63), and the remainder, if any, shall be applied in the following order: first, to any undershipment of lemons, pursuant to § 910.58; second, to any allotment repaid to him, pursuant to § 910.59; third, to any allotment transferred to him, pursuant to § 910.60; fourth, to any allotment assigned to him, pursuant to § 910.63; and fifth, to any allotment borrowed, pursuant to § 910.59.

§ 910.61a Off-bloom allotment.

Notwithstanding the provisions in § 910.53 and elsewhere in this part applicable to allotments, the committee may, prior to the time lemons generally are available in District 1 or District 3, issue special allotments to handlers for handling lemons which result from an off-bloom condition existing in such district or districts. Such han-

diers may apply to the committee, not later than 30 days prior to the anticipated picking of such off-bloom lemons, on forms prescribed by the committee, and shall furnish to the committee such information as it may require to certify the off-bloom condition. On the basis of all available information and after consideration of all of the factors enumerated in § 910.51(b), the committee shall certify the quantity of each handler's off-bloom lemons and determine the extent to which off-bloom allotment shall be granted. Such allotments shall be allocated to all handlers who have certified off-bloom in proportion to the respective quantities so certified. Any off-bloom allotment may be loaned only to other handlers to whom off-bloom allotments have been allocated. The total quantity of a handler's certified off-bloom lemons picked for handling pursuant to off-bloom allotment shall not be used in the computation of such handler's average weekly pick pursuant to § 910.53(d)(1). The committee shall, with the approval of the Secretary, adopt procedural rules and regulations to effectuate the provisions of this section.

[36 FR 9065, May 19, 1971]

§ 910.62 Information to central marketing organizations.

(a) In order further to facilitate arranging allotment transactions pursuant to this subpart, the committee shall give any central marketing organization upon its request, the same notice with respect to prorate bases and allotments, applicable to each handler for whom it markets lemons, as is given to such handlers.

(b) Any central marketing organization which, pursuant to paragraph (a) of this section, receives information from the committee regarding the prorate bases and allotments applicable to the handlers for whom it markets lemons, and which arranges allotment transactions for or on behalf of such handlers, shall keep records, for a period of three years, which will accurately reflect all such allotment transactions, and such records shall be subject to examination by the committee and the Secretary. Any such central marketing organization shall make such reports and furnish such other information with respect thereto as may be required by the committee. If the Secretary finds that any such central marketing organization has failed to keep such records, or has assisted in effecting allotment transactions contrary to the provisions of this subpart, the provisions of paragraph (a) of this section shall not be applicable to such central marketing organization during such period as may be determined by the Secretary.

§ 910.63 Assignment of allotments.

Any person who acquires lemons to be handled by him, and who does not have a prorate base on such lemons, may handle such lemons pursuant to an assignment of an allotment from the handler from who such lemons were acquired and to whom the allotment had been issued, which assigned allotment shall be equal to the quantity of lemons acquired by such person.

Any such assignment shall be evidenced by a certificate which shall be in such form, and issued in such manner, as shall be prescribed by the committee.

§ 910.64 Districts.

For the purpose of administration of this part and in recognition of the fact that there are general differences in maturity and keeping quality of lemons produced in different geographical sections of the production area, the production area is divided into three prorate districts as follows:

(a) "District 1" shall include that part of the State of California which is south of a line drawn due east and west through the present post office in Turlock, Calif., and north of a line drawn due east and west through the present post office in Gorman, Calif., and west of the extension of a line drawn due north and south through the present post office in White Water, Calif., but excluding San Luis Obispo and Santa Barbara Counties.

(b) "District 2" shall include that part of the State of California west of a line drawn due north and south through the present post office in White Water, Calif., and south of a

line drawn due east and west through the present post office in Gorman, Calif., but including San Luis Obispo and Santa Barbara Counties.

(c) "District 3" shall include the State of Arizona and that part of the State of California east of a line drawn due north and south through the present post office in White Water, Calif.

[36 FR 9065, May 19, 1971]

§ 910.65 Recommendations for size regulations.

(a) Whenever the committee finds that the supply and demand conditions for sizes of lemons make it advisable to regulate in any prorate district the handling of lemons during any period, it shall recommend to the Secretary the sizes of lemons grown in such prorate district which it deems advisable to be handled during the said period. The committee shall promptly submit such findings and recommendations, together with supporting information, to the Secretary.

(b) In making its recommendations the committee shall give due consideration to the factors referred to in § 910.51(b).

§ 910.66 Issuance of size regulations.

Whenever the Secretary shall find, from the findings, recommendations, and information submitted by the committee, or from other available information, that to limit the handling of lemons by size in any prorate district would tend to effectuate the declared policy of the act, he shall fix the sizes of lemons grown in each such prorate district which may be handled during the specified period. When any such size regulation restricts the handling of a portion of a specified size, the quantity of such size that may be handled by a handler during a particular week shall be fixed as a percentage of (a) the weekly allotment issued to such handler when volume regulation is in effect, and (b) the total weekly volume handled by such handler when volume regulation is not in effect. The committee shall be informed immediately of any such regulation issued by the Secretary and the committee shall promptly give adequate notice thereof to all handlers.

§ 910.67 Exemptions from size regulation.

In the event lemons are regulated pursuant to § 910.66, the committee shall issue one or more exemption certificates to any producer who furnishes evidence satisfactory to the committee that he will be prevented by reason of such regulation from having as large a proportion of his lemons handled as the average proportion of lemons which may be handled by all other producers in the same prorate district. Such exemption certificate shall permit the respective producer to whom the certificate is issued to handle or have handled a percentage of his lemons equal to the percentage determined as aforesaid. Handling of lemons under exemption certificates issued pursuant to this section shall be subject to and limited by such regulations as may be effective under § 910.52 at the time of the respective shipment. The committee shall adopt, with the approval of the Secretary, procedural rules by which such exemption certificates will be issued to producers. Such exemption certificates may be transferred to handlers when accompanied by lemons covered by such certificates.

Reports

§ 910.70 Weekly report.

On or before such day of each week as may be designated by the committee, each handler shall report to the committee, on forms prepared by it, the following information with respect to lemons marketed by such handler during the immediately preceding week: (a) Quantity handled; (b) quantity shipped for distribution to persons on relief, including quantity donated for charitable purposes; (c) quantity sold or transported for consumption in fresh form in California or Arizona; (d) quantity sold or otherwise disposed of for canning or for manufacture into byproducts; and (e) quantity disposed of otherwise.

§ 910.71 Other reports.

Upon request of the committee made with the approval of the Secretary every handler shall furnish to the committee, in such manner and at

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such times as it prescribes (in addition to such other reports as are specifically provided for in § 910.70), such other information as will enable the committee to perform its duties and to exercise its powers under this subpart.

MISCELLANEOUS PROVISIONS

§ 910.80 Lemons not subject to regulation.

Nothing contained in this subpart shall be construed to authorize any limitation of the right of any person to handle lemons (a) for consumption by charitable institutions or distribution by relief agencies; (b) for conversion into byproducts; or (c) for export to foreign countries other than Canada; nor shall any assessment be levied on lemons so handled. The committee, with the approval of the Secretary, may establish minimum quantities and types of shipments which shall be free from regulation under this subpart; and may prescribe such safeguards as may be necessary to prevent lemons which are exempt from regulation pursuant to this section from entering channels of trade for other than the specific purposes authorized by this section. The term "byproduct" as used in this section includes all processed and manufactured products of lemons, including canned or bottled lemon juice.

§ 910.81 Compliance.

Except as provided in this subpart, no handler shall handle lemons, during any week in which a regulation issued by the Secretary, pursuant to § 910.52, is in effect, unless such handler has an allotment, or an assignment of an allotment, covering such lemons, issued pursuant to this subpart, or unless such handler is otherwise permitted to handle such lemons, under the provisions of this subpart; and no handler shall handle lemons except in conformity to the provisions of this subpart.

§ 910.82 Right of the Secretary.

The members of the committee (including successors and alternates), and any agent or employee appointed or employed by the committee, shall be subject to removal or suspension by the Secretary at any time. Each and every order, regulation, decision, determination or other act of the committee shall be subject to the continuing right of the Secretary to disapprove of the same at any time. Upon such disapproval, the disapproved action of the said committee shall be deemed null and void, except as to acts done in reliance thereon or in compliance therewith prior to such disapproval by the Secretary. In the event the committee, for any reason, fails to perform its duties or exercise its powers under this subpart, the Secretary may designate another agency to perform such duties and to exercise such powers.

§ 910.83 Effective time.

The provisions of this subpart shall become effective April 10, 1941, and shall continue in force until terminated in one of the ways specified in § 910.84.

§ 910.84 Termination.

(a) The Secretary may, at any time, terminate the provisions of this subpart by giving at least one day's notice by means of a press release or in any other manner which he may determine.

(b) The Secretary may terminate or suspend the operation of any or all of the provisions of this subpart whenever he finds that such provisions do not tend to effectuate the declared policy of the act.

(c) The Secretary shall terminate the provisions of this subpart at the end of any fiscal year whenever he finds that such termination is favored by a majority of producers who, during the preceding fiscal year, have been engaged in the production for market of lemons: *Provided*, That such majority has, during such year, produced for market more than fifty percent of the volume of such lemons produced for market; but such termination shall be effected only if announced on or before October 31 of the then current fiscal year.

(d) The provisions of this subpart shall, in any event, terminate whenever the provisions of the act authorizing them cease to be in effect.

§ 910.85 Proceedings after termination.

(a) Upon the termination of the provisions of this subpart, the then functioning members of the committee shall continue as trustees, for the purpose of liquidating the affairs of the committee, of all the funds and property then in the possession of or under control of the committee, including claims for any funds unpaid or property not delivered at the time of such termination. Action by said trusteeship shall require the concurrence of a majority of the said trustees.

(b) The said trustee shall continue in such capacity until discharged by the Secretary; shall, from time to time, account for all receipts and disbursements and deliver all property on hand, together with all books and records of the committee and of the trustees, to such persons as the Secretary may direct; and shall, upon request of the Secretary, execute such assignments or other instruments necessary or appropriate to vest in such person full title and right to all of the funds, property, and claims vested in the committee or the trustees pursuant to this subpart.

(c) Any person to whom funds, property, or claims have been transferred or delivered by the committee or its members, pursuant to this section, shall be subject to the same obligations imposed upon the members of the committee and upon the said trustees.

§ 910.86 Effect of termination or amendment.

Unless otherwise expressly provided by the Secretary, the termination of this subpart or of any regulation issued pursuant to this subpart, or the issuance of any amendment to either thereof, shall not (a) affect or waive any right, duty, obligation, or liability which shall have arisen or which may thereafter arise in connection with any provision of this subpart or any regulation issued under this subpart, or (b) release or extinguish any violation of this subpart or of any regulation under this subpart, or (c) affect or impair any rights or remedies of the Secretary or of any other person with respect to any such violation.

§ 910.87 Duration of immunities.

The benefits, privileges, and immunities conferred upon any person by virtue of this subpart shall cease upon the termination of this subpart, except with respect to acts done under and during the existence of this subpart.

§ 910.88 Agents.

The Secretary may, by designation in writing, name any person, including any officer or employee of the Government, or name any bureau or division in the United States Department of Agriculture, to act as his agent or representative in connection with any of the provisions of this subpart.

§ 910.89 Derogation.

Nothing contained in this subpart is, or shall be construed to be, in derogation or in modification of the rights of the Secretary or of the United States to exercise any powers granted by the act or otherwise, or, in accordance with such powers, to act in the premises whenever such action is deemed advisable.

§ 910.90 Personal liability.

No member or alternate of the committee, nor any employee or agent thereof, shall be held personally responsible, either individually or jointly with others, in any way whatsoever, to any handler or to any person for errors in judgment, mistakes, or other acts, either of commission or omission, as such member, alternate, or employee, except for acts of dishonesty.

§ 910.91 Separability.

If any provision of this subpart is declared invalid, or the applicability thereof to any person, circumstance, or thing is held invalid, the validity of the remainder of this subpart, or the applicability thereof to any other person, circumstance, or thing, shall not be affected thereby.

§ 910.92 Amendments.

Amendments to this subpart may be proposed, from time to time, by the committee or by the Secretary.

Subpart—Lemon Administrative Committee Rules and Regulations

SOURCE: 36 FR 17486, Sept. 1, 1971, unless otherwise noted.

GENERAL

§ 910.100 Application of terms.

Terms used in this subpart shall have the same meaning as when used in the marketing agreement and order (§§ 910.1 to 910.92). Commonly used terms are defined as follows:

(a) *Marketing agreement.* "Marketing agreement" means Marketing Agreement No. 94, as amended, regulating the handling of lemons grown in California and Arizona.

(b) *Order.* "Order" means Order No. 910, as amended (§§ 910.1 to 910.92) regulating the handling of lemons grown in California and Arizona.

(c) *Carload.* Pursuant to § 910.8, the quantity of lemons comprising a carload is the equivalent of 1,000 cartons of lemons.

(d) *Week or weekly.* The term "week" or "weekly" means the period Sunday through the following Saturday. "Weekly regulation period" applies to the same period of time.

(e) *Time.* Whenever a time of day is specified in this subpart, it shall relate to Pacific standard time or Pacific daylight saving time whichever is then in effect in California.

(f) *Legal holiday.* When the date for filing of applications, notices, requests or reports falls on a legal holiday, the due date shall be considered the next following business day.

(g) *Scheduled weekly meeting.* The term "scheduled weekly meeting" means the regularly scheduled weekly meeting, held on Tuesday, or such other day of the week as the committee designates: *Provided,* That when another day is designated notice thereof to handlers shall be published in the committee's weekly lemon bulletin and mailed to handlers at least 6 days prior to such meeting day.

(h) *District 1 Handler, District 2 Handler, District 3 Handler.* "District 1 handler," "District 2 handler," and "District 3 handler," shall mean a handler of lemons produced in District 1, District 2, and District 3, respectively.

COMMUNICATIONS

§ 910.106 Communications.

(a) *Submittals.* Unless otherwise prescribed in this subpart, or in Order No. 910, or required by the Lemon Administrative Committee, all reports, applications, submittals, requests, and communications in connection with Order 910, shall be submitted to: Lemon Administrative Committee, 117 West Ninth Street, Room 905, Los Angeles, CA 90015.

(b) *Filing of applications, notifications or requests.* Handlers who desire consideration by the committee on matters subject to this subpart which require action be taken for a specific weekly regulatory period, shall (unless otherwise specifically provided in this subpart) file such applications, notifications, or requests on or before 12 o'clock noon of the day preceding the day of the scheduled weekly committee meeting during which matters relating to that weekly regulatory period are to be considered, except when such day is a legal holiday, such documents shall be filed at such time on the day of the committee's scheduled weekly meeting. The committee shall not take action on applications, notifications, or requests filed after such deadline. Except as otherwise provided herein, applications, notifications, and requests shall be considered as filed when actually received in the committee offices specified in paragraph (a) of this section.

STORAGE AWAY FROM PACKING HOUSE

§ 910.107 Transportation of lemons.

Any handler who stores lemons within the production area other than on the premises where the lemons are packed shall notify the committee on LAC Form 8 of the transportation of such lemons to such storage. Such report shall show the location and name of the storage facility, and the quantity of lemons transported to such storage. Whenever any such stored lemons are thereafter handled, LAC Form 8 for the week in which the handling occurred shall show each

quantity and date of shipment from the storage facilities.

NOMINATION PROCEDURES

§ 910.120 Change in grower representation.

Pursuant to § 910.22(h) grower representation on the Lemon Administrative Committee for purposes of §§ 910.20 and 910.22 shall be as follows:

	Co-op more than 60 pct.	Other co-ops	Independents
District 1	1	0	0
District 2	2	1	1
District 3	1	0	2

[43 FR 43016, Sept. 22, 1978]

§ 910.121 Time of nomination.

The time of nominating members, alternate members, and additional alternate grower members of the committee, shall be not later than 30 days preceding the date of expiration of the terms of the current committee representatives.

§ 910.122 Manner of nomination.

The manner of nominating committee representatives shall be as follows:

(a) Any cooperative marketing organization which handled more than 60 percent of the total volume of lemons handled during the fiscal year during which the nominations for members are submitted shall by resolution, adopted by its board of directors, nominate representatives as provided in § 910.20.

(b) Each cooperative marketing organization which markets lemons and which is not qualified under § 910.22(b), shall nominate by resolution adopted by its board of directors, representatives as provided in § 910.20. The vote of each such organization shall be weighted as provided in § 910.22(e) by the quantity of lemons which it handled during the fiscal year in which nominations are made.

(c) Not less than four meetings shall be held at such times and places throughout the production area as may be designated by the agent of the Secretary, at which growers who are not members of, or affiliated with, the organizations included under paragraphs (a) and (b) of this section may vote. At each such meeting, the growers present shall nominate committee representatives as provided in § 910.20. All growers voting at any such meeting shall submit their names and addresses to the agent of the Secretary. Votes shall be cast in the manner prescribed under § 910.22(e). Votes for grower member at all nomination meeting places shall be totaled and the nominee receiving the highest number of votes shall have his name submitted as the nominee for grower member. Persons nominated for member and failing to receive a majority vote shall have their names listed with those nominated for alternative grower member and shall have the votes cast for them as member included with such votes, if any, they received for alternate grower member. The nominee receiving the highest total number of votes in this manner shall have his name submitted as the nominee for alternate grower member. Persons nominated for grower member or alternate grower member who failed to receive a majority vote for either of such positions shall have their names listed with those nominated for additional alternate grower member and shall have the votes cast under member and alternate member included with such votes, if any, they received for additional alternate grower member. The nominee securing the highest total number of votes in this manner shall have his name submitted as nominee for additional alternate grower member. The handler member and alternate handler member nominees shall be selected in the same manner as the grower member and alternate grower member nominees. Grower or handler ballots cast listing the same nominee for more than one position on the respective ballot shall be declared void.

§ 910.153 Prorate bases and allotments.

(a) *Application for a prorate base and allotment.* Any person who is handling or proposes to handle lemons as a first handler thereof, shall submit to

the committee, at such time as the committee designates, an application on LAC Form 101 for a prorate base and allotment. Handlers of lemons produced in more than one district shall file a separate application covering the lemons produced in each district. Each application shall contain the following information:

(1) Name and address of applicant.

(2) Net capacity in pounds of each box or other container used by the applicant for the picking of lemons.

(3) Net capacity in pounds of each box or other container used by the applicant for the assembling and storage of lemons.

(4) The estimated production and the proposed picking schedule of lemons for the current season which the applicant owns or controls, and the bearing and nonbearing acreage of such lemons, including the acreage and number of trees planted to lemons during the preceding fiscal year, and the acreage and number of trees taken out of production during such fiscal year.

(5) Location of each of the applicant's packing houses and other designated receiving points, to which lemons are to be delivered to the applicant for which points the applicant seeks approval.

(6) If a handler desires a prorate base period different than that generally prevailing in the district in which the lemons are produced as provided in § 910.53(g) he shall so specify and present information showing how his operations with respect to such lemons are substantially different than those generally prevailing in such district, including differences in: (i) Production, such as the time when lemons under his control are mature and ready to harvest; (ii) storage, such as the capacity and type of his storage facilities; and (iii) marketing practices, such as the interval of time between harvesting and marketing of lemons. In the case of District 2, requests for such adjustment must be at the time the handler submits his application for a prorate base and allotment, and in the case of Districts 1 and 3, requests must be made 3 weeks prior to the time the handler first picks and delivers lemons, other than off-bloom lemons covered by § 910.61a. Based upon such information and information otherwise available, the committee shall determine the extent to which the handler should be granted a different prorate base period and notify the handler of its determination.

(b) *Computation of average weekly pick*—(1) *Determination of cartons of lemons picked and delivered.* Each week the committee shall determine the number of cartons of lemons picked and delivered to each handler in each district during the preceding weekly prorate base period by application of the appropriate field box conversion factor to the number of field boxes of lemons picked and delivered to such handler as is reported pursuant to § 910.170(d). The appropriate field box conversion factor shall be computed for lemons produced in each district pursuant to § 910.153(b)(2).

(2) *Field box conversion factor*—(i) *Computation.* At least once every 8 weeks, the committee's designated employees shall take a detailed inventory by district of the lemons each handler has on hand in his packing house and at designated receiving points. The committee shall compute a field box conversion factor for each handler by district of production. This factor shall be applied each week to the handler's district picks and deliveries subsequent to this inventory and shall remain in effect until a revised factor is computed from the date of a subsequent inventory. An inventory period is comprised of the number of weeks between two successive detailed inventories. Field box conversion factors shall be computed by dividing the total number of field boxes of lemons picked and delivered to each handler during the interval between the current and immediately preceding inventory periods by the number of cartons, or their equivalent, utilized by the handler during this period as determined by adding to the current detailed inventory of lemons on hand, the total number of cartons of lemons shipped in fresh fruit channels, handled for conversion into byproducts and otherwise utilized (except decayed lemons dumped) during the same period, and subtracting therefrom the

detailed inventory of cartons of lemons on hand at the beginning of such period.

(ii) *Initial conversion factors.* The Committee shall determine the initial conversion factor for all handlers at the beginning of the fiscal year. Such determination shall be based to the extent practicable upon a handler's average for the preceding 3 fiscal years. Such conversion factor shall be revised as provided in paragraph (b)(2)(i) of this section after the first detailed inventory by committee employees.

(3) *Storage box conversion factor.* In computing the quantity of lemons in terms of carloads that a handler has on hand, the standard storage box having a capacity of 50 pounds net weight of lemons shall be converted to cartons on the basis that one such box equals 1.316 cartons of lemons. If at any time the committee determines that such storage boxes or other containers do not substantially contain such net weight of lemons, appropriate adjustments may be made by the committee in such handler's storage box conversion factor to compensate for such difference.

(4) *Access to premises and records of handlers.* The committee, through its designated employees, shall have access at all reasonable hours to the premises and records of each handler whose application for a prorate base and allotment has been approved, for the purpose of determining the accuracy of the reports made to the committee. Such records include, but are not limited to, individual grower tickets covering the lemons delivered at the receiving door of the packing house or designated receiving points, the wash records, the lemons in storage, lemons handled for conversion into byproducts, lemons shipped under regulated movement and export, and lemons otherwise disposed of.

(c) *Average weekly pick computation.* Average weekly picks shall be computed pursuant to § 910.53 as adjusted by the provisions of paragraphs (a)(6), (d), and (e) of this § 910.153 except that for any handler of lemons produced in District 1 or 3 the provisions of § 910.53(d)(2) are modified as follows pursuant to § 910.53(h):

(1) For the initial number of consecutive weeks after the beginning of such handler's new season, equal to the number of weeks in the applicable prorate base period or as such base period has been modified pursuant to paragraph (a)(6) of this section, the average weekly pick computed for the first week of picks and succeeding weeks shall be computed as follows:

(i) The total quantity picked and delivered to the handler in the first week divided by 1 week less than the number of weeks in the prorate base period multiplied by one-half the number of weeks as determined by the committee that the lemons will be substantially picked and delivered to the handler but not to exceed 1 week less than the number of weeks in the prorate base period.

(ii) The total quantity picked and delivered to the handler in the first and second weeks divided by 2 and then divided by 1 week less than the number of weeks in the prorate base period multiplied by ½ the number of weeks as determined by the committee that lemons will be substantially picked and delivered to the handler but not to exceed 1 week less than the number of weeks in the prorate base period.

(iii) The total quantity picked and delivered to the handler in the first 3 weeks and succeeding weeks (until the total number of the most recent weeks equals the total number of weeks in such handler's applicable prorate base period) divided by the total weeks of picks and deliveries so included and then divided by 1 week less than the number of weeks in the prorate base period and multiplied by ½ the number of weeks, as determined by the committee, that lemons will be substantially picked and delivered to the handler but not to exceed 1 week less than the number of weeks in the prorate base period.

(2) On the basis of the computation of the handler's average weekly pick, the committee shall fix a prorate base for each handler who is entitled thereto. Each such prorate base shall represent the ratio between the average weekly pick for each applicant handler and the total of such average weekly picks for all applicant handlers.

(d) *Adjustment of prorate bases.* The prorate bases of handlers shall be adjusted to correct errors, omissions, or inaccuracies as provided in this part, during a period of 3 consecutive weeks, or during the remainder of the applicable season if of shorter duration than 3 weeks.

(e) *Adjustments of average weekly picks*—(1) *Application for upward adjustment by Districts 1 and 3 handlers.* Any District 1 or 3 handler desiring an upward adjustment in his average weekly picks for a designated week, shall, pursuant to § 910.53(f)(1), request such increase from the committee by telephone or telegram, or by filing LAC Form 101-A. Such request must be submitted to the committee offices in accordance with § 910.106(b). A telephone or telegram request shall be confirmed by application filed in like manner postmarked not later than the day preceding the committee's scheduled weekly meeting. Each application and each confirmation shall indicate the name and address of the applicant, and the amount of upward adjustment requested for a designated week.

(2) *Application for new prorate base, for accelerated averaging of weekly picks, and for upward adjustments by District 2 handlers.* Any District 2 handler whose picks are interrupted for 8 successive weeks or more may request the committee to start a new prorate base period and, if desired, for accompanying accelerated averaging of weekly picks of the type described in § 910.53(d)(2), and for upward adjustments of average weekly picks of the type described in § 910.53(f). The application for a new prorate base and the initial application for accelerated averaging and for upward adjustments of weekly picks shall be on LAC Form 101-A filed with the committee in accordance with § 910.106. Form LAC 101-A shall include the following information: (i) The length of the period of time the handler has not been picking; (ii) the handler's 12 average weekly picks (or such other prorate base period as the handler may have been granted) at the time of consideration of his application; (iii) the handler's actual storage; (iv) whether picks are increasing or decreasing in the handler's own and in other districts; (v) the manner in which his operation differs from other handlers in his district, and (vi) in the case of applications for upward adjustment, the amount of upward adjustment requested for each designated week. Upon being granted upward adjustments hereunder, District 2 handlers may file other such applications during the same fiscal year in the same manner as filed by Districts 1 and 3 handlers without supporting information.

(3) *Granting of upward adjustment for Districts 1 and 3 applicants.* Upon receiving a duly filed application for an upward adjustment by a District 1 or 3 handler pursuant to § 910.53(f)(1) the committee shall adjust the average weekly pick of such handler by increasing such picks in the amount requested, but not in excess of 50 percent of such handler's average weekly pick: *Provided,* That during the period August 1, 1984, through July 31, 1985, upon request of any such handler, the committee shall adjust such handler's average weekly pick in the amount requested but not in excess of 100 percent. Such adjustment may be granted for any 1 or more weeks (not exceeding eight) during the period beginning with the first week of the initial prorate base period of a season for which the handler's average weekly pick is computed and ending not later than the middle week of such handler's picking season. The committee shall determine such middle week, to the extent practicable, on the basis of the handler's performance for the last 3 fiscal years except where such handler's anticipated picking pattern for the current fiscal year is substantially different than his historical performance, in which case the committee may establish a middle week on the basis of some other time period deemed by the committee to be more representative of such handler's anticipated picking pattern for the current fiscal year.

(4) *Granting of application for a new prorate base, for accelerated averaging and for upward adjustment of weekly picks, to District 2 handlers.* The committee shall review the applications of District 2 handlers filed pur-

suant to § 910.153(e)(2) and take such action thereon as it deems necessary or appropriate in order to avoid or mitigate undue hardship to such handlers and to preserve equity among all handlers. In making its determination, the committee shall consider information presented in the handler's application, as well as other available information. The committee may grant upward adjustments to District 2 handlers for a period not to exceed 8 consecutive weeks, beginning with the first week of the new prorate base period. In computing the average weekly pick of a district 2 handler who has been granted a new prorate base period, the committee shall include lemons picked and delivered after approval of the handler's application, but not lemons picked and delivered prior thereto.

(5) *Repayment of upward adjustments.* (i) All repayment of upward adjustments will be made in successive weeks by subtracting from the handler's average weekly pick, the same quantity in the same order as upward adjustments were granted, except weeks wherein no upward adjustment was granted shall be excluded. Such adjustment shall be repaid starting the week following the designated midweek of each Districts 1 and 3 handler and the week following the last week that a District 2 handler is permitted to request any upward adjustment. The committee may require repayment at an accelerated rate when it is deemed necessary to assure repayment is made in full; provided written notice shall be mailed to the handler of the intent to accelerate repayment, and the rate thereof, at least 5 days prior to the effective date thereof, and upon the request of the handler, the effective date shall be deferred until after the next scheduled meeting of the committee and the handler shall be given an opportunity at such meeting to present any information he deems pertinent bearing upon his ability to repay such upward adjustments in the manner proposed. Such accelerated rate of repayment shall be applied, to the extent practicable, uniformly during the anticipated weeks remaining when allotment will be issued on the handler's prorate base. If during any week of the repayment period, the handler's average weekly pick is not sufficient to permit repayment in full, the obligation to repay the balance owed such week shall be carried forward to the next following prorate base periods until all upward adjustments are repaid in full. Any handler who desires to repay an upward adjustment more rapidly than provided above shall notify the committee in accordance with § 910.106(b) and, in weeks designated, the committee shall deduct the additional quantities requested by the handler.

(ii) District 1 and District 3 handlers who deem it impracticable to repay upward adjustments in 8 consecutive weeks commencing with the week following their middle week as provided in paragraph (e)(5)(i) of this section may apply to the committee for a different repayment schedule. Applications for different repayment schedules must be filed with the committee on LAC Form 101B in accordance with § 910.106(b) not later than 3 weeks prior to the week during which such repayments would commence. LAC Form 101B shall contain the following information:

(*a*) The name and address of the applicant;

(*b*) The applicant's anticipated picking program for the balance of the season, including the applicant's estimate as to the number of field boxes of lemons remaining to be picked and delivered;

(*c*) The applicant's middle week and the week when the applicant will substantially complete picking and delivering lemons;

(*d*) The reasons why it would be impracticable for the applicant to make repayment of anticipated upward adjustments as provided in paragraph (e)(5)(i) of this section, and

(*e*) The applicant's requested repayment schedule in terms of the weeks of picking and delivering lemons and of the amount of weekly repayments.

(iii) Based upon the information contained in LAC Form 101B and such other information as the committee deems pertinent, the committee shall act upon such application and may grant the repayment schedule requested. The committee shall normally re-

quire repayment by the end of the week when the applicant substantially completes his last picks and deliveries of lemons for the season but may, in exceptional cases where it deems circumstances require and it is determined that the applicant will carry forward sufficient credit for picks and deliveries, extend the repayment schedule beyond such time. Handlers shall be promptly notified of the committee's action.

(iv) The obligation for repayment of upward adjustments shall be deemed satisfied upon fulfillment of the following conditions:

(*a*) Any handler who desires to take advantage of the provisions of this subsection, shall, not less than three weeks prior to the date he wishes to stop picking, file a request with the committee stating the date that he intends to stop picking and request committee certification of the crop remaining under his control to be picked. To be eligible for certification the designated acreage shall be comprised of trees on which the remaining quantity of lemons on a per acre basis is equal to 10 percent of the prior three year average per acre production for the district or at least 70 carton equivalents per acre.

(*b*) The committee shall conduct such investigation as it deems necessary to verify the quantity of lemons on the trees, and shall promptly notify the handler as to its certification findings.

(f) *Shipping at the start of a prorate base period.* After submission of an application for prorate base and allotment for the current year and prior to issuance of allotments for lemons picked, for a single 2-week period only, all Districts 1 and 3 handlers and those District 2 handlers who have been authorized to begin a new prorate base period pursuant to § 910.53(f)(2), may handle lemons in anticipation of allotments to be issued to them. Such 2-week period shall commence with the first week in which picks are delivered in a new fiscal year for Districts 1 and 3 handlers and District 2 handlers with the first week in which picks are delivered in a new prorate base period. All of the first allotments issued to such handlers therafter (or so much as is needed to cover the shipments) shall be applied to such shipments until all shipments have been entirely covered by allotment.

(g) *Change in prorate base periods.* Pursuant to § 910.53(h) the number of weeks in the prorate base periods for the several districts as specified in § 910.53(e) shall be: District 1, 6 weeks; District 2, 12 weeks; and District 3, 4 weeks.

(h) *Change in the duration of a different prorate base period that any handler may apply for to the committee.* Pursuant to § 910.53(h) the number of weeks specified in § 910.53(g) shall be in no event less than 4 weeks nor more than 12 weeks.

[36 FR 17486, Sept. 1, 1971, as amended at 37 FR 17049, Aug. 24, 1972; 37 FR 21158, Oct. 6, 1972; 41 FR 10440, Mar. 11, 1976; 41 FR 39736, Sept. 16, 1976; 44 FR 41421, July 17, 1979; 49 FR 30456, July 31, 1984]

§ 910.154 Forfeiture credit.

(a) The forfeiture of any handler's undershipped allotment, other than off-bloom allotment, shall be applied to reduce overshipments of handlers as provided in § 910.57, unless the forfeiting handler makes a bona fide and timely offer to the committee to lend his undershipments. An offer shall be considered bona fide and timely if such offer (1) was received in the offices of the committee by 12 o'clock noon Wednesday and (2) included at least two payback dates.

(b) If the forfeited allotment in a district exceeds that required to offset overshipments in such district, and the overshipments exceed forfeitures in other districts, the surplus forfeiture credit shall be allocated as provided in § 910.57 to handlers in deficient districts in proportion to their permissible overshipments.

Allotment Loans

§ 910.159 Allotment loans.

(a) *Loans arranged by handlers.* Handlers may, on an individual basis, negotiate intradistrict loans and shall confirm such loans pursuant to this subpart. Loans arranged by handlers shall be subject to the following:

(1) *Payback date.* Each allotment loan agreement entered into by a handler must provide for a payback date agreeable to both lender and borrower.

(2) *Ability to repay.* Before approving allotment loans, the committee shall determine that the borrowing handler has, with a reasonable degree of certainty, the ability to make repayment within 1 year from the date of the loan.

(3) *Confirmation.* Handlers who make loans pursuant to § 910.59(a) shall report such transactions to the committee within 48 hours and the committee shall mail written confirmation to the parties within 48 hours after receipt of such notification: *Provided,* That parties to loans made on Saturday shall notify the committee not later than 10 a.m. the following Monday. Loans not in accordance with § 910.59(a) and this subparagraph shall not be valid and the committee shall so notify the parties within 48 hours after receipt of information concerning such transaction.

(b) *Loans arranged by the committee.* Handlers desiring to borrow or loan allotment may request the committee to arrange intradistrict loans on their behalf; and the committee shall arrange such loans subject to the provisions hereinafter setforth. All interdistrict loans shall be arranged through the committee subject to the provisions of this section. The committee shall consider offers to loan and requests to borrow allotment filed not later than 12 o'clock noon Wednesday separately from offers and requests received thereafter during the same prorate week. All such loan arrangements are subject to the following provisions:

(1) *General provisions*—(i) *Filing and confirmation.* Offers to loan and requests for allotment may be made in person or by telephone. Immediately after completing arrangements for a loan, the committee shall confirm the terms thereof, by mailing LAC Form 10, Confirmation of Loan of Allotment, to the handlers involved.

(ii) *Modification.* Loan offers and requests submitted to the committee may be modified or withdrawn any time prior to 12 o'clock noon Wednesday, after which time the committee shall arrange allotment loans on the basis of offers and requests received by such time including modifications thereof. Loan offers and requests not fully utilized in such loan allotment arrangements may be modified or withdrawn. Offers to loan and requests to borrow allotment received subsequent to 12 o'clock noon Wednesday may be modified or withdrawn at any time during such prorate week provided that arrangements with respect to such offered allotment have not been completed by the committee.

(iii) *Cancellation.* Loan offers and requests submitted subsequent to 12 o'clock noon Wednesday, remain in effect until midnight Saturday unless withdrawn before such time.

(iv) *Payback dates.* Each handler offering allotment for loan shall specify at least two payback dates for such allotment, or any part thereof. To receive the loan of such allotment, or portion thereof offered, the payback date specified by the requesting handler must be the same as one of the repayment dates specified by the offering handler. For loan arrangements made pursuant to paragraph (b)(2)(v) of this section, payback dates may be negotiated by the handlers.

(v) *Ability to repay.* Before arranging or approving allotment loans, the committee shall determine that the borrowing handler has, with a reasonable degree of certainty, the ability to make repayment within 1 year from the date of the loan.

(2) *Method of arranging loans*—(i) *District application.* Offers to loan allotment shall be applied first to the arrangement of loans to handlers within the same district. Any surplus of allotment from such district shall then be apportioned in like manner to requests for allotment by handlers in other districts.

(ii) *Arrangement when requests exceed quantity offered.* If the requests for allotment in a district exceed the quantity offered by the handlers in that district, the quantity offered shall be apportioned to each borrowing handler so that the amount each receives bears the same ratio to the total amount received by all borrowing handlers as his average weekly pick bears to the total of average weekly picks of all borrowing handlers, but

not to exceed the amount originally requested.

(iii) *Arrangement when quantity offered exceeds requests.* If the quantity offered in any district exceeds the quantity requested in that district, the same proportion of each offering handler's allotment shall be loaned.

(iv) *Loan arrangements for requests filed before 12 o'clock noon.* Immediately after 12 o'clock noon deadline on Wednesday, the committee will, to the extent practicable, arrange loans on the basis of requests and offers received prior to this time using the methods prescribed in this section.

(v) *Loan arrangements for requests filed after 12 o'clock noon.* Offers to loan allotment received by the committee subsequent to 12 o'clock noon Wednesday, shall be applied pursuant to this section first to arrangement of loans to handlers within the same district whose requests were received prior to such time but have not been filled. Any remaining allotment shall be applied to the arrangement of loans to handlers filing requests subsequent to 12 o'clock noon Wednesday. Such requests shall be filled pursuant to the provisions of this section, to the extent practicable, in the order received. When repayment dates of borrowing and loaning handlers do not coincide, the committee may advise the requesting handler of the handlers in his district having allotment to loan, permitting them to work out and modify payback dates to accomplish loans.

§ 910.161a Off-bloom allotment.

(a) *Application for certification.* Applications are to be filed at such time as designated by the committee, but not later than 30 days prior to the anticipated picking of off-bloom lemons in Districts 1 and 3. Any handler controlling off-bloom lemons who desires to handle such lemons prior to the picking of his normal crop lemons, shall file an application for certification with the committee on LAC Form 103, pursuant to § 910.106. Such application shall show the name and address of the applicant, the specific location of the off-bloom lemon groves, the estimated quantity of off-bloom fruit available, and the estimated time of picking such fruit. On the basis of all the information available including factors prescribed in § 910.51(b), the committee shall certify the quantity of each handler's off-bloom lemons and determine the extent to which off-bloom allotment shall be granted.

(b) *Application for weekly allotment.* Any handler who desires to receive allotment for a specific week to handle lemons certified under the preceding paragraph shall request such allotments in person, by telephone, telegram, or by filing properly completed LAC Form 161 in accordance with § 910.106. All requests not made by properly completed LAC Form 161 shall be confirmed by filing such form as provided in § 910.106. Each application shall contain the name and address of the applicant, the number of cartons of off-bloom allotment desired to be shipped during a specific week and such other information as the committee may request.

(c) *Issuance of weekly allotment.* The committee shall allocate allotment each week in such proportion as the quantity of off-bloom lemons a handler has certified bears to the total quantity of all off-bloom lemons certified for all handlers, but not in excess of the amount a handler requests, and any allotment then remaining shall be granted in successive increments, as necessary, to handlers filing requests, in the same proportion as aforesaid but not in excess of the amount requested: *Provided,* That such allotment shall be granted only for certified lemons which have been picked and delivered and the total allotment granted shall not be for more than 15 percentage points above the percentage which the Committee estimates will be marketed in domestic channels in its current marketing policy established pursuant to § 910.50.

(d) *Use of allotment.* Off-bloom allotments issued to any qualifying handler may be used pursuant to this section only during the week for which issued. The provisions of §§ 910.57 and 910.58 relating to over and under shipment are not applicable to off-bloom allotment.

(e) *Off-bloom allotment loans.* A handler to whom off-bloom allotment has been issued may lend such allot-

ment to other handlers of lemons produced in the same district to whom off-bloom allotment has also been issued. Such loans must be arranged by the parties in accordance with the procedure set forth in § 910.159(a), and the committee shall not arrange loans for such handlers as provided in § 910.159(b). Such loan agreements shall include a date for repayment of the allotments during the time the lender has off-bloom lemons available for shipment and during such time as the borrower may be reasonably expected to draw sufficient allotment to accomplish payback. If on the date of repayment specified in the loan agreement, the borrower has insufficient off-bloom allotment to repay a loan, such loan will continue to be paid off during successive weeks while the borrower is being issued off-bloom allotment. Off-bloom allotments shall be repaid only from such allotments received during the current fiscal year.

[36 FR 17486, Sept. 1, 1971, as amended at 37 FR 15979, Aug. 9, 1972]

Size Regulation

§ 910.165 Exemption from size regulation.

(a) *Application.* Each grower who desires to be exempted, pursuant to § 910.67, from the provisions of any size regulation established by the Secretary, may file with the committee an application for one or more exemption certificates on LAC Form 200. Such application must, unless otherwise provided pursuant to paragraph (b) of this section, be furnished to the committee not later than the Monday of the week preceding the week during which the grower desires the committee to take action thereon, and shall contain the following information: (1) Name and address of the applicant; (2) location of the lemons which the grower wishes covered by the exemption certificates; (3) the estimated sizes of the lemons contained in the applicant's groves and percentages of the respective sizes; (4) the size tests or other facts upon which such estimates are based showing, with respect to the size tests, the number of lemons per tree tested and the total number of lemons tested per acre; (5) the quantity of lemons (in terms of cartons) which the applicant estimates will be needed to be exempted from size regulation to permit the applicant to handle, or have handled, a percentage of his lemons equal to the average percentage that may be handled on behalf of all growers in the same district, as provided in § 910.67; and (6) the name of each packinghouse through which the applicant's lemons are to be handled.

(b) *Final dates for filing application.* The committee may provide final dates for the filing of applications for exemptions from size regulations in each district.

(c) *Investigation by the field department.* The committee shall refer such application to its field department for investigation. The field department shall make such checks as it determines are necessary to establish the accuracy of the information submitted in the application and the need of the applicant for an exemption certificate. The report of the field department shall be submitted to the committee for its consideration in connection with the issuance of an exemption certificate. If the committee determines that the information furnished by the applicant is inadequate, it may require the applicant to submit additional information, including additional size tests.

(d) *Determination by the committee.* Based upon all available information, the committee may authorize the committee manager to issue exemption certificates on LAC Form 201 to the applicant which will permit the applicant to have as large a proportion of his lemons handled as the average proportion of lemons that will be handled on behalf of all growers in the same district. The initial exemption certificate issued pursuant to this section to any applicant may provide for exemption of not more than 75 percent of the applicant's estimated needs, and subsequent exemption certificates shall thereafter be issued to the extent required by the provisions of § 910.67.

(e) *Exemption certificate.* Upon authorization of the committee, the manager shall issue to growers who have applied therefor, exemption certificates which shall contain the fol-

lowing information: (1) Name and address of grower-applicant to whom issued; (2) location of grove or groves; (3) the respective quantities of lemons of each size permitted to be handled without regard to the existing size regulation; and (4) the period covered by the exemption certificate. The exemption certificate shall be issued in quadruplicate, one copy to be retained by the committee, and three copies to be issued to the grower. The grower shall endorse and deliver two copies to the handler who is to handle such lemons. Immediately upon shipping such lemons the handler shall sign and mail, or otherwise deliver, to the committee one copy of such certificate. An exemption certificate may be used only for the handling of lemons covered by the certificate. As required by § 910.67, all handling of such lemons shall be subject to, and limited by, allotment when volume regulation is in effect.

REPORTS

§ 910.170 Reports.

(a) Handlers shall submit to the committee all required reports, including those prescribed in this section. Copies of the report forms may be obtained from the committee. Unless otherwise specified in the particular report form, information with respect to volume of lemons shall be reported in terms of packed cartons. For fresh shipments of lemons other than in cartons, the volume of such lemons shall be converted into cartons on the basis of 38 pounds net weight per carton.

(b) *Lemon Diversion Report (LAC Form 5).* Each Lemon Diversion Report submitted shall set forth the name and address of the approved by-products manufacturer, charitable institution, relief agency, or other diversion outlet to which the lemons were shipped; the number of loose boxes of such lemons; total net weight of such lemons; and certification by the handler and the receiver of such lemons as to the accuracy of the information contained in the report. This report shall be submitted to the committee not later than Saturday of the then current week.

(c) *Daily Manifest Report and Certificate of Assignment of Allotment (LAC Form 203.6).* Within 24 hours after shipment of lemons is made to points within the continental United States or to Alaska or Canada, the handler thereof shall report such shipment to the committee on LAC Form 203-6 properly completed and signed by the handler or his authorized agent. Form LAC 203-6 shall include the following information with respect to each shipment:

(1) The total quantity of lemons and size distribution thereof.

(2) The date and time of pickup or shipment.

(3) The handler's invoice number.

(4) The destination.

(5) The truck license, or railroad car number.

In addition, for truck shipments, the name of the driver and the driver's signature, and the name and address of consignee shall be given.

(d) *Weekly Report (LAC Form 8).* (1) All handlers shall, on LAC Form 8, provide the committee with the following information concerning receipt and disposition of all lemons handled each week. Such report shall be mailed to the committee not later than Monday of the week following:

(i) The total shipments of fresh lemons subject to allotment; volume exported other than to Canada; volume handled for conversion into byproducts; volume shipped for distribution by relief agencies or for consumption by charitable institutions; and volume disposed of otherwise.

(ii) The total field boxes of lemons received.

(iii) The location of any lemons stored in loose or packed form within the production area other than the handler's own premises. The name of the storage facility where stored, the respective quantity of lemons transported to such facilities and so stored, and the date and quantity of each shipment of lemons from such storage.

(2) Information required to complete LAC Form 8 shall be compiled by handlers not later than noon Monday, and upon telephone request, handlers shall orally provide the committee with such information.

(3) An amended Weekly Report Form (LAC Form 8) shall be promptly filed by the handler whenever necessary to reflect:

(i) Any shipment declared for export and diverted into other channels; and

(ii) Any fruit destined for processing which is not shipped during the week such fruit is documented and reported to the committee.

[36 FR 17486, Sept. 1, 1971, as amended at 39 FR 34393, Sept. 25, 1974]

LEMONS NOT SUBJECT TO REGULATION

§ 910.180 Lemons not subject to regulation.

(a) *Byproduct lemons.* No handler shall be granted exemption from regulations to handle lemons for conversion into byproducts unless such lemons are shipped to an approved byproducts manufacturer. All shipments to an approved byproducts manufacturer shall be reported to the committee on LAC Form 5 pursuant to § 910.170(b).

(b) *Approved by-products manufacturer.* (1) Any person who desires to acquire lemons as an approved by-products manufacturer for commercial processing into by-products, pursuant to § 910.80, must first apply to and obtain approval from the committee. Applicants for such exemption shall submit to the committee an application on LAC Form No. 104 containing the following information: (i) The name and address of applicant; (ii) the proposed type of by-product(s) to be made or derived from lemons; (iii) the approximate quantity of lemons to be used annually; (iv) a description of the product(s) to be manufactured and the equipment to be used in manufacturing such by-products and the capacity per hour thereof; (v) the intended disposition of unused components of the lemons; (vi) a statement describing the manner in which the by-product(s) will be sold, whether at wholesale, retail, or both; (vii) a statement whether lemon juice will be pasteurized and, if so, a description of the manner in which such pasteurization will be accomplished; (viii) the location of the plant(s); (ix) a statement that the lemons acquired hereunder will be used for by-products manufacturing only and will not be resold or disposed of in fresh fruit channels; and (x) an agreement to submit such reports as may be required by the committee.

(2) Such application shall be referred to the committee's Compliance Department for investigation and reported back to the committee. The committee shall approve the application if, in its opinion: (i) The applicant's principal occupation is manufacturing food by-products, including lemon by-products; (ii) all lemon by-products, including juice, will be sold at wholesale only; (iii) the applicant agrees to submit such reports as may be required by the committee; (iv) the lemons obtained under this exemption will not be resold or disposed of in fresh fruit channels; and (v) approval of the application will not be contrary to the purposes of this part. If an application is denied, the committee shall within a reasonable time inform the applicant in writing of the facts and reasons therefor, and afford the applicant an opportunity, either orally or in writing, to present opposing facts and reasons. If the application is approved, the applicant's name shall be placed on the list of approved by-products manufacturers. The applicant shall be informed of the committee's determination in a timely manner.

(3) A commercial processor on the list of approved by-products manufacturers who: (i) Fails to commercially process lemons into by-products for a period of one year or more; (ii) sells or otherwise disposes of any lemon by-products manufactured from lemons at the retail level; (iii) sells or otherwise disposes of lemons obtained under this exemption in fresh fruit channels; (iv) fails or refuses to submit reports required by the committee, may be determined by the committee to be ineligible to acquire lemons under this exemption and the committee may suspend or remove its name from the list of approved by-products manufacturers for such time as the committee deems appropriate in the circumstances. Prior to making such determination the committee shall give the processor reasonable advance notice in writing of its intention, the facts and reasons therefor; and afford

the processor an opportunity, either orally or in writing, to present opposing facts and reasons. After a processor's name has been removed from the list of approved by-products manufacturers, it must submit a new application and secure approval of the committee in order to acquire exempt lemons pursuant to § 910.80.

(c) *Lemons for export*—(1) *To Mexico.* With respect to all shipments of lemons to Mexico, the handler shall obtain from the purchaser, at the time of delivery of such lemons, a certification on LAC Form 11, to the U.S. Department of Agriculture and the Lemon Administrative Committee that such lemons are to be exported directly to Mexico and will not reenter the United States or be reshipped to Canada. Such certificate (LAC Form 11) shall state the date of shipment, the quantity of lemons included in such shipment, the truck license number or other identification of the carrier of such lemons, and the signature of the purchaser or his authorized agent and the address thereof. The certificate shall be filed with the handler's weekly report.

(2) *Armed Forces for export.* With respect to all sales of lemons to the Armed Forces for export, the handler shall complete LAC Form 12, "Certificate of Sale of Lemons for Export to the Armed Forces", showing date of shipment, the quantity of lemons included in such shipment, their destination or port of departure, and the purchase order number. Such certificate shall be signed by the handler or his authorized agent and shall be submitted to the committee with the handler's weekly report. Handlers who maintain documents in the regular course of their business containing all of the information required for completion of LAC Form 12, which bear the signature of the handler or his authorized agent, subject to committee approval, may in lieu thereof, submit to the committee a copy of these documents in the same manner as LAC Form 12.

(3) *Other shipments in export.* To be entitled to an exemption for export, except on shipments of lemons to Mexico, or the Armed Forces, the handler must stencil or otherwise mark the container for export purposes at his packinghouse, and thereafter forward the lemons directly to the point of export embarkation. Such handler shall submit to the committee, attached to LAC Form 8, documentary proof acceptable to the committee showing that the lemons were actually exported.

(d) *Minimum quantities and types of shipments.* (1) Any person who desires to distribute lemons as gifts, to market or distribute lemons as gift packages, or to ship lemons in containers or in a manner not customarily used by lemon handlers (e.g., parcel post, or express by truck or railroad) directly to consumers, shall file with the committee an application for exemption from regulation for such shipments. Such application shall contain the following information: (i) Name and address of the applicant; (ii) the type of shipment or container for which an exemption is requested; (iii) the estimated volume of lemons to be handled in such type of shipments during a marketing season; (iv) the outlets to which such shipments are to be made; and (v) a statement of the applicant's reasons why such shipments should be exempted from regulation. Such application should be referred to the committee's Compliance Department for investigation and upon receipt of the investigation report the committee shall determine if an exemption should be granted to the applicant. The committee shall notify the applicant in writing of its determination.

(2) The handling of lemons to approved livestock feeders and livestock feed suppliers shall be exempt from regulations. All shipments to approved livestock feeders and livestock feed suppliers shall be reported to the committee on LAC Form 5, pursuant to § 910.170(b). Any person who desires to acquire lemons to feed such person's own livestock, to buy, for the purpose of resale, or to handle for a fee, lemons for use as livestock feed, shall, prior thereto, file with the committee an application and agreement therefor on LAC Form 104A, which shall contain the following information: (i) Name and address of the applicant; (ii) an agreement that the lemons obtained for use as livestock

feed shall be used for that purpose only and not be resold, disposed, of, or in any way handled so as to enter fresh fruit channels; (iii) an agreement to promptly submit such reports at such times as may be required by the committee; and (iv) if a broker or dealer, that person's Federal or State commodity license number. The application shall be signed by the applicant or an authorized employee of the applicant. Upon receipt, the application will be referred to the committee's Compliance Department for investigation. When completed, the report of the investigation shall be given to the committee; and based thereon and upon other availalble information, the committee shall approve or disapprove the application and notify the applicant accordingly. If the application is approved, the name of the applicant shall be placed on the list of approved livestock feeders and livestock feed suppliers. Misuse of the provisions as herein provided, or failure to promptly submit reports as may be required under paragraph (d)(2)(iii) of this section shall be cause for the immediate removal of such person's name from the list of approved livestock feeders and livestock feed suppliers.

(e) *Grower exemption.* Any grower, other than a grower whose principal occupation is that of food distribution, who desires to sell lemons which the grower produces direct to consumers without regard to volume and size restrictions, shall file with the committee at the beginning of each marketing season an application for exemption on LAC Form 105C. Such application shall show: (1) The name and address of the grower; (2) the location at which the grower desires to sell lemons to consumers; (3) the estimated quantity of lemons which will be sold in this manner during the marketing year; and (4) evidence that the grower's principal occupation is not that of food distribution. The grower shall be notified in writing of the action taken by the committee on the application. Upon approval of the application, the grower may sell lemons produced by the grower direct to a consumer with regard to the restrictions of volume or size prescribed pursuant to Order No. 910. This exemption shall not apply to sales of lemons made at a packinghouse.

[36 FR 17486, Sept. 1, 1971, as amended at 45 FR 42243, June 24, 1980; 46 FR 42840, Aug. 25, 1981]

NOTE: After January 1, 1979, "Budget of Expenses and Rate of Assessment" regulations (e.g., sections .200 through .299) and "Handling" regulations (e.g., sections .300 through .999) which are in effect for a year or less, will not be carried in the Code of Federal Regulations. For FEDERAL REGISTER citations affecting these regulations, see the "List of Sections Affected" in this volume.

Subpart—Size Regulation

§ 910.631 Lemon Regulation 331.

(a) On and after December 6, 1981, no handler shall handle any lemons grown in District 1, District 2, or District 3 which are of a size smaller than 1.82 inches in diameter, which shall be the largest measurement at a right angle to a straight line running from the stem to the blossom end of the fruit: *Provided,* That not to exceed 5 percent, by count, of the lemons in any type of container may measure smaller than 1.82 inches in diameter.

[46 FR 53393, Oct. 29, 1981]

PART 911—LIMES GROWN IN FLORIDA

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911.344 Florida Lime Regulation 43.

AUTHORITY: Secs. 1-19, 48 Stat. 31, as amended; 7 U.S.C. 601-674.

Subpart—Order Regulating Handling

SOURCE: 20 FR 4179, June 15, 1955, unless otherwise noted. Redesignated at 26 FR 12751, Dec. 30, 1961.

DEFINITIONS

§ 911.1 Secretary.

"Secretary" means the Secretary of Agriculture of the United States, or any officer or employee of the Department to whom authority has heretofore been delegated, or to whom authority may hereafter be delegated, to act in his stead.

§ 911.2 Act.

"Act" means Public Act No. 10, 73d Congress (May 12, 1933), as amended and as reenacted and amended by the Agricultural Marketing Agreement Act of 1937, as amended (48 Stat. 31, as amended; 7 U.S.C. 601 et seq.; 68 Stat. 906, 1047).

§ 911.3 Person.

"Person" means an individual, partnership, corporation, association or any other business unit.

§ 911.4 Production area.

"Production area" means all of the State of Florida, except the area west of the Suwannee River.

§ 911.5 Limes.

"Limes" means all varieties and clones of acid limes, grown in the production area, classified botanically as Citrus Aurantifolia (Christm.) Swingle, and includes the group known as true limes (also known as Mexican, West Indian, and Key limes and by other synonyms) and the group known

as large fruited or Persian limes (including Tahiti, Bearss, and similar varieties).

§ 911.6 Fiscal year.

"Fiscal year" means the twelve-month period ending March 31 of each year.

§ 911.7 Committee.

"Committee" means the Florida Lime Administrative Committee established pursuant to § 911.20.

§ 911.8 Grower.

"Grower" is synonymous with producer and means any person who produces limes for market and who has a proprietary interest therein: *Provided,* That as used in § 911.22 the term grower shall include only those who have a proprietary interest in the production of 10 or more bearing lime trees.

[20 FR 4179, June 15, 1955, as amended at 22 FR 2527, Apr. 13, 1957. Redesignated at 26 FR 12751, Dec. 30, 1961]

§ 911.9 Handler.

"Handler" is synonymous with shipper and means any person (except a common or contract carrier transporting limes owned by another person) who handles limes or causes limes to be handled.

§ 911.10 Handle or ship.

"Handle" is synonymous with "ship" and means to sell, consign, deliver, or transport limes within the production area or between the production area and any point outside thereof: *Provided,* That such term shall not include: (a) The sale or delivery of limes to a handler, registered as such with the committee in accordance with such rules and regulations as it may prescribe with the approval of the Secretary, who has facilities within the production area for preparing limes for market; (b) the delivery of limes to such a handler solely for the purpose of having such limes prepared for market; or (c) the transportation of limes by a handler, so registered with the committee, from the grove to his packing facilities within the production area for the purpose of having such limes prepared for market. In the event a grower sells his limes to a handler who is not so registered with the committee, such grower shall be the first handler of such limes.

[20 FR 4179, June 15, 1955. Redesignated at 26 FR 12751, Dec. 30, 1961, and amended at 37 FR 10498, May 24, 1972]

§ 911.11 District.

"District" means the applicable one of the following described subdivisions of the production area, or such other subdivisions as may be prescribed pursuant to § 911.29(n):

(a) "District 1" shall include Dade and Monroe counties.

(b) "District 2" shall include all of the production area except Dade and Monroe counties.

§ 911.12 Export.

"Export" means to ship limes to any destination which is not within the 48 contiguous States or the District of Columbia of the United States or Canada.

[43 FR 39320, Sept. 5, 1978]

Administrative Body

§ 911.20 Establishment and membership.

(a) There is hereby established a Florida Lime Administrative Committee consisting of nine members, each of whom shall have an alternate who shall have the same qualifications as the member for whom he is an alternate. Five of the members and their respective alternates shall be growers who shall not be handlers of limes produced by others or employees of such handlers. Four of the members and their respective alternates shall be handlers or employees of handlers. The five members of the committee who shall be growers who shall not be handlers of limes produced by others or employees of such handlers are referred to as "grower" members of the committee; and the four members who shall be handlers or employees of handlers are referred to as "handler" members of the committee. Four of the five grower members shall be producers of limes in District 1, and one grower member shall be a producer of limes in District 2. Three of the four

handler members shall be handlers, or employees of handlers, of limes in District 1, and one handler member shall be a handler, or an employee of a handler of limes in District 2.

(b) The committee may be increased by one public member and alternate. Persons for the public member positions would be nominated by the committee and selected by the Secretary. The committee, with the approval of the Secretary, shall prescribe qualifications, term of office, and the procedure for nominating the public member and alternate.

[20 FR 4179, June 15, 1955. Redesignated at 26 FR 12751, Dec. 30, 1961, and amended at 30 FR 916, Jan. 29, 1965; 43 FR 39320, Sept. 5, 1978]

§ 911.21 Term of office.

The term of office of each member and alternate member of the committee shall begin April 1, and shall terminate March 31 of the following year. Members and alternate members shall serve in such capacities for the portion of the term of office for which they are selected and qualify and until their respective successors are selected and have qualified. The consecutive terms of office of members shall be limited to three terms.

§ 911.22 Nomination.

(a) *Initial members.* Nominations for each of the five initial grower members and four initial handler members of the committee, together with nominations for the initial alternate members for each position, may be submitted to the Secretary by individual growers and handlers. Such nominations may be made by means of group meetings of the growers and handlers concerned in each district. Such nominations, if made, shall be filed with the Secretary no later than the effective date hereof. In the event nominations for initial members and alternate members of the committee are not filed pursuant to, and within the time specified in, this section, the Secretary may select such initial members and alternate members without regard to nominations, but selections shall be on the basis of the representation provided for in § 911.20.

(b) *Successor members.* (1) The committee shall hold or cause to be held a meeting or meetings of growers and handlers in each district to designate nominees for successor members and alternate members of the committee, or the committee may conduct nominations by mail in District 2 in a manner recommended by the committee and approved by the Secretary. Such nominations shall be submitted to the Secretary by the committee not later than February 15 of each year. The committee shall prescribe procedural rules, not inconsistent with the provisions of this section, for the conduct of nominations.

(2) Only growers may participate in the nomination and election of nominees for grower members and their alternates. Each grower shall be entitled to cast only one vote for each nominee to be elected in the district in which he produces limes. No grower shall participate in the election of nominees in more than one district in any one fiscal year.

(3) Only handlers may participate in the nomination and election of nominees for handler members and their alternates. Each handler shall be entitled to cast only one vote for each nominee to be elected in the district in which he handles limes, which vote shall be weighted by the volume of limes shipped by such handler during the immediately preceding twelve month period January through December. No handler shall participate in the election of nominees in more than one district in any one fiscal year.

[20 FR 4179, June 15, 1955. Redesignated at 26 FR 12751, Dec. 30, 1961, and amended at 40 FR 52604, Nov. 11, 1975]

§ 911.23 Selection.

From the nominations made pursuant to § 911.22, or from other qualified persons, the Secretary shall select the five grower members of the committee, the four handler members of the committee, and an alternate for each such member.

§ 911.24 Failure to nominate.

If nominations are not made within the time and in the manner prescribed

in § 911.22, the Secretary may, without regard to nominations, select the members and alternate members of the committee on the basis of the representation provided for in § 911.20.

§ 911.25 Acceptance.

Any person selected by the Secretary as a member or as an alternate member of the committee shall qualify by filing a written acceptance with the Secretary within ten days after being notified of such selection.

§ 911.26 Vacancies.

To fill any vacancy occasioned by the failure of any person selected as a member or as an alternate member of the committee to qualify, or in the event of the death, removal, resignation, or disqualification of any member or alternate member of the committee, a successor for the unexpired term of such member or alternate member of the committee shall be nominated and selected in the manner specified in §§ 911.22 and 911.23. If the names of nominees to fill any such vacancy are not made available to the Secretary within fifteen days after such vacancy occurs, the Secretary may fill such vacancy without regard to nominations, which selection shall be made on the basis of representation provided for in § 911.20.

§ 911.27 Alternate members.

An alternate member of the committee, during the absence or at the request of the member for whom he is an alternate, shall act in the place and stead of such member. In the event of the death, removal, resignation, or disqualification of a member, his alternate shall act for him until a successor for such member is selected and has qualified. In the event both a member and his alternate are unable to attend a committee meeting, the chairman may designate any alternate who is present and who is not serving for any member to serve in such absent member's place and stead: *Provided*, That only grower alternate members may be so designated to serve for grower members and only handler alternate members may be so designated to serve for handler members.

[20 FR 4179, June 15, 1955. Redesignated at 26 FR 12751, Dec. 30, 1961, and amended at 35 FR 16626, Oct. 27, 1970]

§ 911.28 Powers.

The committee shall have the following powers:

(a) To administer the provisions of this part in accordance with its terms;

(b) To receive, investigate, and report to the Secretary complaints of violations of the provisions of this part.

(c) To make and adopt rules and regulations to effectuate the terms and provisions of this part; and

(d) To recommend to the Secretary amendments to this part.

§ 911.29 Duties.

The committee shall have, among others, the following duties:

(a) To select a chairman and such other officers as may be necessary, and to define the duties of such officers;

(b) To appoint such employees, agents, and representatives as it may deem necessary, and to determine the compensation and to define the duties of each;

(c) To submit to the Secretary as soon as practicable after the beginning of each fiscal year a budget for such fiscal year, including a report in explanation of the items appearing therein and a recommendation as to the rate of assessment for such fiscal year;

(d) To keep minutes, books, and records which will reflect all of the acts and transactions of the committee and which shall be subject to examination by the Secretary;

(e) To prepare periodic statements of the financial operations of the committee and to make copies of each such statement available to growers and handlers for examination at the office of the committee;

(f) To cause its books to be audited by a certified public accountant at least once each fiscal year, and at such other times as the Secretary may request;

(g) To act as intermediary between the Secretary and any grower or handler;

(h) To investigate and assemble data on the growing, handling, and marketing conditions with respect to limes;

(i) To submit to the Secretary such available information as he may request;

(j) To notify, as provided in this part, producers and handlers of all meetings of the committee to consider recommendations for regulation;

(k) To give the Secretary the same notice of meetings of the committee as is given to its members;

(l) To consult with such representatives of growers or groups of growers as may be deemed necessary and to pay the travel expenses incurred by such representatives in attending committee meetings at the request of the committee: *Provided,* That the committee shall not pay the travel expenses of more than three such representatives in connection with any one meeting of the committee;

(m) To investigate compliance with the provisions of this part; and

(n) With the approval of the Secretary, to redefine the districts into which the production area is divided, and to reapportion the representation of any district on the committee: *Provided,* That any such changes shall reflect, insofar as practicable, shifts in lime production within the districts and the production area.

§ 911.30 Procedure.

(a) Except as provided in paragraphs (c) and (d), of this section, six members of the committee, including alternates acting for members, shall constitute a quorum and any decision, recommendation or other action of the committee shall require not less than five concurring votes, including one by a handler, or an alternate acting as such: *Provided,* That if the committee is increased by one, the quorum requirement shall be increased to seven and any decision, recommendation or other action of the committee shall require not less than six concurring votes, including one by a handler or an alternate acting as such.

(b) The committee may provide for simultaneous meetings of groups of its members assembled at two or more designated places: *Provided,* That such meetings shall be subject to the establishment of telephone communication between all such groups and the availability of loud speaker receivers for each group so that each member may participate in the discussions and other actions the same as if the committee were assembled in one place.

(c) For any recommendation of the committee pursuant to § 911.53 as to the total quantity of limes deemed advisable to be handled during any week immediately following two or more continuous weeks of regulation pursuant to § 911.54 nine members of the committee, including alternates acting for members, shall constitute a quorum and nine concuring votes shall be required. The quorum and voting requirements specified in this paragraph shall not apply to recommendations pursuant to § 911.53 to increase the quantity that may be handled during the applicable week or pursuant to § 911.54 to terminate or suspend a regulation.

(d) For any recommendation of the committee for an assessment rate exceeding $0.20 per bushel to be applied pursuant to § 911.41, the quorum requirement shall be eight members or alternates acting for members and eight concurring votes shall be required.

[22 FR 2527, Apr. 13, 1957. Redesignated at 26 FR 12751, Dec. 30, 1961, and amended at 37 FR 10498, May 24, 1972; 43 FR 39320, Sept. 5, 1978]

§ 911.31 Expenses.

The members of the committee and their respective alternates when performing duties at the direction of the committee, shall be reimbursed for expenses necessarily incurred by them in the performance of their duties under this part.

[43 FR 39320, Sept. 5, 1978]

§ 911.32 Annual report.

The committee shall, as soon as practicable after the close of each fiscal year, prepare and mail an annual report to the Secretary and to each handler and grower who requests a copy of the report. This annual report shall contain at least: (a) A complete review of the regulatory operations during the fiscal year; (b) an

appraisal of the effect of such regulatory operations upon the lime industry; and (c) any recommendations for changes in the program.

[20 FR 4179, June 15, 1955, as amended at 22 FR 2527, Apr. 13, 1957. Redesignated at 26 FR 12751, Dec. 30, 1961]

Expenses and Assessments

§ 911.40 Expenses.

The committee is authorized to incur such expenses as the Secretary finds are reasonable and likely to be incurred to enable the committee to exercise its powers and perform its duties in accordance with the provisions of this part during each fiscal year. The funds to cover such expenses shall be acquired by the levying of assessments as provided for in § 911.41.

[20 FR 4179, June 15, 1955. Redesignated at 26 FR 12751, Dec. 30, 1961, and amended at 35 FR 16626, Oct. 27, 1970]

§ 911.41 Assessments.

(a) Each person who first handles limes shall, with respect to limes so handled by him, pay to the committee upon demand such person's pro rata share of the expenses which the Secretary finds are reasonable and likely to be incurred by the committee during each fiscal year. Each such person's share of such expenses shall be equal to the ratio between the total quantity of limes handled by him as the first handler thereof during the applicable fiscal year and the total quantity of limes so handled by all persons during the same fiscal year. The payment of assessments for the maintenance and functioning of the committee may be required under this part throughout the period it is in effect irrespective of whether particular provisions thereof are suspended or become inoperative. If a handler does not pay his assessment within the time prescribed by the committee, the unpaid assessment may be subject to an interest charge at rates prescribed by the committee with the approval of the Secretary.

(b) The Secretary shall fix the rate of assessment per 55-pounds of fruit or equivalent in any container or in bulk, to be paid by each such handler. At any time during or after a fiscal year, the Secretary may increase the rate of assessment in order to secure sufficient funds to cover any later finding by the Secretary relative to the expenses which may be incurred. Such increase shall be applied to all fruit handled during the applicable fiscal year. In order to provide funds for the administration of the provisions of this part, the committee may accept the payment of assessments in advance.

[20 FR 4179, June 15, 1955. Redesignated at 26 FR 12751, Dec. 30, 1961, and amended at 35 FR 16626, Oct. 27, 1970; 40 FR 52604, Nov. 11, 1975; 43 FR 39320, Sept. 5, 1978]

§ 911.42 Accounting.

(a) If, at the end of a fiscal year, the assessments collected are in excess of expenses incurred, such excess shall be accounted for as follows:

(1) Except as provided in paragraph (a)(2) of this section, each person entitled to a proportionate refund of the excess assessment shall be credited with such refund against the operation of the following fiscal year unless such person demands repayment thereof, in which event it shall be paid to him: *Provided,* That any sum paid by a person in excess of his pro rata share of the expenses during any fiscal year may be applied by the committee at the end of such fiscal year to any outstanding obligations due the committee from such person.

(2) The Secretary, upon recommendation of the committee, may determine that it is appropriate for the maintenance and functioning of the committee that the funds remaining at the end of a fiscal year which are in excess of the expenses necessary for committee operations during such year may be carried over into following years as a reserve. Such reserve may be established at an amount not to exceed approximately 3 fiscal years' operational expenses. Funds in the reserve may also be used to cover the necessary expenses of liquidation, in the event of termination of this part to cover the expenses incurred for the maintenance and functioning of the committee during any fiscal year when there is a crop failure, or during any period of suspension of any or all the

provisions of this part. Such reserve may also be used by the committee to finance its operations during any fiscal year prior to the time that assessment income is sufficient to cover such expenses and to cover deficits incurred during any fiscal year when income is less than expenses. Upon termination of this part, any funds not required to defray the necessary expenses of liquidation shall be disposed of in such manner as the Secretary may determine to be appropriate: *Provided,* That to the extent practical, such funds shall be returned pro rata to the persons from whom such funds were collected.

(b) All funds received by the committee pursuant to the provisions of this part shall be used solely for the purposes specified in this part, and shall be accounted for in the manner provided in this part. The Secretary may, at any time, require the committee and its members to account for all receipts and disbursements.

[20 FR 4179, June 15, 1955, as amended at 22 FR 2527, Apr. 13, 1957. Redesignated at 26 FR 12751, Dec. 30, 1961, and amended at 35 FR 16626, Oct. 27, 1970; 43 FR 39320, Sept. 5, 1978]

RESEARCH

§ 911.45 Production research, marketing research and development.

The committee may, with the approval of the Secretary, establish or provide for the establishment of production research, marketing research and development projects designed to assist, improve, or promote the marketing, distribution, and consumption or efficient production of limes. Such projects may provide for any form of marketing promotion, including paid advertising. The expenses of such projects shall be paid from funds collected pursuant to the applicable provisions of § 911.41.

[40 FR 52604, Nov. 11, 1975]

REGULATIONS

§ 911.46 Marketing policy.

Each fiscal year prior to making any recommendation pursuant to § 911.47 or § 911.53, the committee shall submit to the Secretary a report setting forth its marketing policy for such fiscal year. Such marketing policy report shall contain information relative to (a) the estimated total production of limes within the production area; (b) the expected general quality and size of limes in the production area and in other areas, including foreign competing areas; (c) the expected demand conditions for limes in different market outlets; (d) the expected shipments of limes produced in the production area and in other areas including foreign competing areas, together with a schedule of estimated weekly shipments of limes during such fiscal year; (e) supplies of competing commodities; (f) trend and level of consumer income; (g) other factors having a bearing on the marketing of limes; and (h) the type of regulations expected to be recommended during the season. In the event it becomes advisable, because of changes in the supply and demand situation for limes, to modify substantially such marketing policy, the committee shall submit to the Secretary a revised marketing policy report setting forth the information prescribed in this section. The committee shall publicly announce the contents of each marketing policy report and copies thereof shall be maintained in the offices of the committee where they shall be available for examination by growers and handlers.

[20 FR 4179, June 15, 1955, as amended at 22 FR 2527, Apr. 13, 1957. Redesignated at 26 FR 12751, Dec. 30, 1961, further redesignated and amended at 37 FR 10498, May 24, 1972]

§ 911.47 Recommendations for regulation.

(a) Whenever the committee deems it advisable to regulate the handling of any variety or varieties of limes in the manner provided in § 911.48, it shall so recommend to the Secretary.

(b) In arriving at its recommendations for regulation pursuant to paragraph (a) of this section, the committee shall give consideration to current information with respect to the factors affecting the supply and demand for limes during the period or periods when it is proposed that such regulation should be made effective. With

each such recommendation for regulation, the committee shall submit to the Secretary the data and information on which such recommendation is predicated, and such other available information as the Secretary may request.

(c) All meetings of the committee held for the purpose of formulating recommendations for regulations shall be open to growers and handlers. The committee shall give notice of such meetings to growers and handlers by mailing such notice to each grower and handler who has filed his address with the committee and requested such notice.

[20 FR 4179, June 15, 1955, as amended at 22 FR 2527, Apr. 13, 1957. Redesignated at 26 FR 12751, Dec. 30, 1961, further redesignated and amended at 37 FR 10498, May 24, 1972]

§ 911.48 Issuance of regulations.

(a) The Secretary shall regulate, in the manner specified in this section, the handling of limes whenever he finds, from the recommendations and information submitted by the committee or from other available information, that such regulations will tend to effectuate the declared policy of the act. Such regulations may:

(1) Prohibit, during any specified period or periods, the handling of any variety or varieties of limes which do not meet such grade, size, and quality (including internal quality and juice content) standards as shall be prescribed;

(2) Prescribe minimum standards of quality for any variety or varieties of limes and limit the handling thereof to those meeting such minimum standards;

(3) Limit the shipment of the total quantity of limes by prohibiting the shipment thereof: *Provided*, That no such prohibition shall be effective during any fiscal period other than for four periods not exceeding six days each immediately prior to, including, or following July 4, Labor Day, Thanksgiving Day, and Christmas Day.

(4) Fix the size, capacity, weight, dimensions, or pack of the container or containers which may be used in the packaging, and the transportation, sale, shipment, or other handling of limes; and

(5) Establish and prescribe pack specifications for the grading and packing of any variety or varieties of limes and require that all limes handled shall be packed in accordance with such pack specifications, and shall be identified by appropriate labels, seals, stamps, or tags, affixed to the containers by the handler under the supervision of the committee or an inspector of the Federal-State Inspection Service, showing the particular pack specifications of the lot.

(6) Provide that any or all requirements effective pursuant to paragraphs (a)(1), (3), and (4) of this section applicable to the handling of limes shall be different for the handling of limes within the production area and for the handling of limes between the production area and any point outside thereof.

(7) Prescribe requirements, as provided in this paragraph, applicable to exports of any variety of limes which are different from those applicable to the handling of the same variety to other destinations.

(b) The committee shall be informed immediately of any such regulations issued by the Secretary and the committee shall promptly give notice thereof to growers and handlers.

[20 FR 4179, June 15, 1955, as amended at 22 FR 2527, Apr. 13, 1957. Redesignated at 26 FR 12751, Dec. 30, 1961, and amended at 36 FR 14125, July 30, 1971; further redesignated at 37 FR 10498, May 24, 1972, and amended at 40 FR 52604, Nov. 11, 1975; 43 FR 39320, Sept. 5, 1978]

§ 911.49 Modification, suspension, or termination of regulations.

(a) In the event the committee at any time finds that, by reason of changed conditions, any regulations issued pursuant to § 911.48 should be modified, suspended, or terminated, it shall so recommend to the Secretary.

(b) Whenever the Secretary finds, from the recommendations and information submitted by the committee or from other available information, that a regulation should be modified, suspended, or terminated with respect to any or all shipments of limes in order to effectuate the declared policy of

the act, he shall modify, suspend, or terminate such regulation. If the Secretary finds that a regulation obstructs or does not tend to effectuate the declared policy of the act, he shall suspend or terminate such regulation. On the same basis and in like manner the Secretary may terminate any such modification or suspension.

[20 FR 4179, June 15, 1955, as amended at 22 FR 2527, Apr. 13, 1957. Redesignated at 26 FR 12751, Dec. 30, 1961, further redesignated and amended at 37 FR 10498, May 24, 1972]

§ 911.50 Exemption certificate.

In the event the handling of limes is regulated pursuant to § 911.48, the committee shall issue one or more exemption certificates to any person who furnishes evidence satisfactory to the committee that, by reason of conditions beyond his control, he will be prevented, because of such regulation, from having as large a proportion of a particular variety of his limes handled as the average proportion of all such limes which may be handled. Such exemption certificates shall authorize the person to whom the certificates are issued to handle, or have handled, a percentage of his crop of the particular variety of limes equal to the percentage determined as aforesaid. The committee shall adopt, with the approval of the Secretary, procedural rules by which such exemption certificates will be issued and the limes covered thereunder may be handled. Exemption certificates shall be transferred to the handler of the limes covered by such certificates at the time the limes are delivered to such handler.

[20 FR 4179, June 15, 1955, as amended at 22 FR 2527, Apr. 13, 1957. Redesignated at 26 FR 12751, Dec. 30, 1961, further redesignated and amended at 37 FR 10498, May 24, 1972]

§ 911.51 Inspection and certification.

Whenever the handling of any variety of limes is regulated pursuant to § 911.48, each handler who handles limes shall, prior thereto, cause each lot of limes handled to be inspected by the Federal-State Inspection Service and certified by it as meeting the applicable requirements of such regulation: *Provided,* That such inspection and certification shall be required when the limes previously have been so inspected and certified only if such limes have been regraded, resorted, or repackaged after the prior inspection and certification. Promptly thereafter, each such handler shall submit, or cause to be submitted, to the committee a copy of the certificate of inspection with respect to such handling.

[20 FR 4179, June 15, 1955, as amended at 22 FR 2527, Apr. 13, 1957. Redesignated at 26 FR 12751, Dec. 30, 1961, further redesignated and amended at 37 FR 10498, May 24, 1972]

§ 911.52 Limes not subject to regulations.

Except as otherwise provided in this section, any person may, without regard to the provisions of §§ 911.41, 911.48, 911.51, and 911.54 through 911.58, and the regulations issued thereunder, handle limes (a) for consumption by charitable institutions; (b) for distribution by relief agencies; (c) for commercial processing into products; or (d) in such minimum quantities or types of shipments, or for such specified purposes as the committee, with the approval of the Secretary, may prescribe. The committee shall, with the approval of the Secretary, prescribe such rules, regulations, and safeguards as it may deem necessary to prevent limes handled under the provisions of this section from entering channels of trade for other than the specific purposes authorized by this section. Such rules, regulations, and safeguards may include the requirements that handlers shall file applications with the committee for authorization to handle limes pursuant to this section, and that such applications be accompanied by a certification by the intended purchaser or receiver that the limes will not be used for any purpose not authorized by this section.

[20 FR 4179, June 15, 1955, as amended at 22 FR 2527, Apr. 13, 1957. Redesignated at 26 FR 12751, Dec. 30, 1961, further redesignated and amended at 37 FR 10498, May 24, 1972]

§ 911.53 Recommendation for volume regulation.

(a) The committee may, during any week, recommend to the Secretary the total quantity of limes which it deems advisable to be handled to destinations within the forty-eight contiguous States of the United States, the District of Columbia and Canada during the next succeeding week: *Provided,* That such volume regulation shall not be recommended for any week except during the 18-week regulatory period beginning with the week preceding the first full week in May: *Provided, further,* That no such regulation shall be recommended after such regulations have been in effect for an aggregate of eight (8) weeks during the aforesaid period.

(b) In making its recommendations, the committee shall give due consideration to the following factors:

(1) Market prices for limes;

(2) Supply of limes en route to principal markets;

(3) Supply, maturity, and condition of limes in the production area;

(4) Market prices and supplies of fruits from competitive producing areas, including foreign competing areas, and supplies of other competitive fruits;

(5) Trend and level in consumer income; and

(6) Other relevant factors.

(c) At any time during a week for which the Secretary, pursuant to § 911.54, has fixed the quantity of limes which may be handled, the committee may recommend to the Secretary that such quantity be increased for such week. Each such recommendation, together with the committee's reason for such recommendation, shall be submitted promptly to the Secretary.

[37 FR 10498, May 24, 1972, as amended at 43 FR 39321, Sept. 5, 1978]

§ 911.54 Issuance of volume regulations.

Whenever the Secretary finds from the recommendation and information submitted by the committee, or from other available information, that to limit the quantity of limes which may be handled to destinations within the 48 contiguous States of the United States, the District of Columbia and Canada during a specified week of a regulatory period will tend to effectuate the declared policy of the act, he shall fix such quantity: *Provided,* That such regulations during a regulatory period shall not in the aggregate limit the volume of lime shipments for more than eight (8) weeks. The quantity so fixed for any week may be increased by the Secretary at any time during such week. Such regulations may, as authorized by the act, be made effective irrespective of whether the season average price of limes is in excess of the parity price. The Secretary may, upon the recommendation of the committee, or upon other available information, terminate or suspend any regulation pursuant to this section at any time.

[43 FR 39321, Sept. 5, 1978]

§ 911.55 Prorate bases.

(a) Each person who desires to handle limes shall submit to the committee, at such time and in such manner as may be designated by the committee, and upon forms made available by it, a written application for a prorate base and for allotments as provided in this section and § 911.56.

(b) Such application shall be substantiated in such manner and shall be supported by such information as the committee may require.

(c) The committee shall determine the accuracy of the information submitted pursuant to this section. Whenever the committee finds that there is an error, omission, or inaccuracy in any such information, it shall correct the same and shall give the person who submitted the information a reasonable opportunity to discuss with the committee the factors considered in making the correction.

(d) Each week during the regulatory period when volume regulation is likely to be recommended for the following week, the committee shall compute a prorate base for each handler who has made application in accordance with the provisions of this section. The prorate base for each such handler shall be computed by adding together the handler's shipments of

limes in the current season and his shipments in the immediately preceding seasons, if any, within the representative period, in which he shipped limes and dividing such total by a divisor computed by adding together the number of weeks elapsed in the current season and eighteen weeks for each of such immediately preceding seasons within the representative period in which the handler shipped limes. For purposes of this section "shipments" shall include only those limes which were shipped to destinations within the forty-eight contiguous States of the United States, the District of Columbia and Canada; "representative period" means the two preceding seasons together with the current season; the term "season" means the eighteen-week period beginning with the week preceding the first full week in May of any fiscal year; and the term "current season" means the period beginning with the week preceding the first full week in May of the current fiscal year through the fourth full week preceding the week of regulation: *Provided,* That when official shipping records are available to the committee he said "current season" shall extend through the third full week preceding the week of regulation.

[37 FR 10499, May 24, 1972, as amended at 43 FR 39321, Sept. 5, 1978]

§ 911.56 Allotments.

Whenever the Secretary has fixed the quantity of limes which may be handled during any week, the committee shall calculate the quantity of limes which may be handled during such week by each person who has applied for a prorate base and for whom such a base was computed by the committee. Such quantity shall be the allotment of such person and shall be that portion of the total quantity fixed by the Secretary which, expressed in terms of percent, is equal to the percentage that such applicant's prorate base is of the aggregate of the prorate bases of all such applicants. The committee shall give reasonable notice in writing to each person of the allotment computed for him pursuant to this section.

[37 FR 10499, May 24, 1972]

§ 911.57 Overshipments.

During any week for which the Secretary has fixed the total quantity of limes which may be handled, any person who has received an allotment including any handler who received zero allotment computed pursuant to §§ 911.55 and 911.56 may handle, in addition to the total allotment available to him, an amount of limes equal to 50 bushels or two percent of such total allotment, whichever is the greater, except that during two weeks of each regulatory period any handler may overship his total allotment by more than such amount: *Provided,* That such overshipment shall not exceed an amount equal to 10 percent of such total allotment: *And provided, further,* That each handler who intends to so overship notifies the committee of his intended overshipment no later than the close of business on Thursday during the week of such intended overshipment.

[40 FR 52604, Nov. 11, 1975]

§ 911.58 Undershipments.

If any person handles during any week a quantity of limes, covered by a regulation issued pursuant to § 911.54, in an amount less than the total allotment available to him for such week, he may handle, during the next week, only, a quantity of limes, in addition to that permitted by the allotment available to him for such week, equivalent to such undershipment or 50 percent of the allotment issued to him for the week during which the undershipment was made, whichever is the lesser: *Provided,* That the committee, with the approval of the Secretary, may increase or decrease such percentage.

[37 FR 10499, May 24, 1972]

§ 911.59 Allotment loans and transfers.

(a) A person to whom an allotment has been issued for a particular week may lend or transfer all or part of such allotment to other persons to whom allotments also have been issued.

(b) Loaned or transferred allotment may be used only during the particular week for which issued.

(c) Each party to any loan or transfer, shall, prior to the handling of any limes covered by a loan or transferred allotment, notify the committee of the loan or transfer including the applicable dates, if any, of repayment.

(d) If not volume regulation is in effect in the week when a loan repayment is due the repayment requirement shall be deemed canceled.

(e) Any handler to whom an allotment has been issued and who desires to be a party to any such loan or transfer arrangement, may communicate such information to the committee. As a service to handlers, the committee shall act as a clearinghouse of such information and make it available to all such handlers upon request. However, as required by paragraph (c) of this section each party to any such loan or transfer shall, prior to the handling of any limes covered by the loan or transferred allotment, notify the committee of the loan or transfer, including the applicable dates, if any, of repayment.

[37 FR 10499, May 24, 1972]

Reports

§ 911.60 Reports.

(a) Each handler shall furnish to the committee, at such times and for such periods as the committee may designate, certified reports covering, to the extent necessary for the committee to perform its functions, the following: (1) The quantities of each variety of limes he received; (2) a complete record of the quantities disposed of by him, segregated as to varieties and as to the respective quantities subject to regulation and not subject to regulation; (3) the date of each such disposition, the destination, by State, zone, or market area, of each lot of limes handled, and identification of the carrier transporting such fruit; (4) identification of the inspection certificates and the exemption certificates, if any, pursuant to which the fruit was handled, together with the destination of each such exempted disposition, and of all fruit handled pursuant to § 911.56; and (5) the quantity of each variety held by him at the end of the period.

(b) Upon request of the committee, made with the approval of the Secretary, each handler shall furnish to the committee, in such manner and at such times as it may prescribe, such other information as may be necessary to enable the committee to perform its duties under this part.

(c) Each handler shall maintain for at least two succeeding fiscal years, such records of the limes received and disposed of by him as may be necessary to verify the reports he submits to the committee pursuant to this section.

(d) All reports and records submitted by handlers pursuant to the provisions of this section shall be received by, and at all times be in custody of, one or more designated employees of the committee. No such employee shall disclose to any person, other than the Secretary upon request therefor, data or information obtained or extracted from such reports and records which might affect the trade position, financial condition, or business operation of the particular handler from whom received: *Provided*, That such data and information may be combined, and made available to any person, in the form of general reports in which the identities of the individual handler furnishing the information is not disclosed and may be revealed to any extent necessary to effect compliance with the provisions of this part and the regulations issued thereunder.

[20 FR 4179, June 15, 1955, as amended at 22 FR 2527, Apr. 13, 1957. Redesignated at 26 FR 12751, Dec. 30, 1961]

Miscellaneous Provisions

§ 911.61 Compliance.

Except as provided in this part, no person shall handle limes, the shipment of which has been prohibited by the Secretary in accordance with the provisions of this part; and no person shall handle limes except in conformity with the provisions of this part and the regulations issued under this part.

§ 911.62 Right of the Secretary.

The members of the committee (including successors and alternates), and any agents, employees, or representatives thereof, shall be subject to removal or suspension by the Secretary at any time. Each and every regulation, decision, determination, or other act of the committee shall be subject to the continuing right of the Secretary to disapprove of the same at any time. Upon such disapproval, the disapproved action of the committee shall be deemed null and void, except as to acts done in reliance thereon or in accordance therewith prior to such disapproval by the Secretary.

§ 911.63 Effective time.

The provisions of this part, and of any amendment thereto, shall become effective at such time as the Secretary may declare above his signature to this part, and shall continue in force until terminated in one of the ways specified in § 911.64.

§ 911.64 Termination.

(a) The Secretary may at any time terminate the provisions of this part by giving at least one day's notice by means of a press release or in any other manner in which he may determine.

(b) The Secretary shall terminate or suspend the operation of any and all of the provisions of this part whenever he finds that such provisions do not tend to effectuate the declared policy of the act.

(c) The Secretary shall terminate the provisions of this part at the end of any fiscal year whenever he finds that continuance is not favored by the majority of producers who, during a representative period determined by the Secretary, were engaged in the production of limes for market: *Provided,* That such termination is announced on or before March 15 of the then current fiscal year. The Secretary shall, as soon as practicable after the close of the fiscal year ending March 31, 1957, conduct a referendum of producers and a poll of handlers to determine whether the continuation of this part is favored by them. Producers entitled to vote in such referendum shall be those who, during the fiscal year ending March 31, 1957, were engaged in producing limes for market and the poll shall be confined to handlers who handled limes in that same fiscal year. If it develops from said referendum and poll that (1) less than two-thirds of the producers, by number or volume of production represented in said referendum, favor the continuance of this part, or (2) handlers representing more than one-half the volume of limes handled favor termination of this part, the Secretary shall thereupon terminate this part.

(d) The provisions of this part shall, in any event, terminate whenever the provisions of the act authorizing them cease to be in effect.

§ 911.65 Proceedings after termination.

(a) Upon the termination of the provisions of this part, the committee shall, for the purpose of liquidating the affairs of the committee, continue as trustees of all the funds and property then in its possession, or under its control, including claims for any funds unpaid or property not delivered at the time of such termination.

(b) The said trustees shall (1) continue in such capacity until discharged by the Secretary; (2) from time to time account for all receipts and disbursements and deliver all property on hand, together with all books and records of the committee and of the trustees, to such persons as the Secretary may direct; and (3) upon the request of the Secretary, execute such assignments or other instruments necessary or appropriate to vest in such person, full title and right to all of the funds, property, and claims vested in the committee or the trustees pursuant thereto.

(c) Any person to whom funds, property, or claims have been transferred or delivered, pursuant to this section, shall be subject to the same obligation imposed upon the committee and upon the trustees.

§ 911.66 Effect of termination or amendment.

Unless otherwise expressly provided by the Secretary, the termination of this part or of any regulation issued pursuant to this part, or the issuance

of any amendment to either thereof, shall not (a) affect or waive any right, duty, obligation, or liability which shall have arisen or which may thereafter arise in connection with any provision of this part or any regulation issued under this part, or (b) release or extinguish any violation of this part or of any regulation issued under this part, or (c) affect or impair any rights or remedies of the Secretary or of any other person with respect to any such violation.

§ 911.67 Duration of immunities.

The benefits, privileges, and immunities conferred upon any person by virtue of this part shall cease upon its termination, except with respect to acts done under and during the existence of this part.

§ 911.68 Agents.

The Secretary may, by designation in writing, name any officer or employee of the United States, or name any agency or division in the United States Department of Agriculture to act as his agent or representative in connection with any of the provisions of this part.

§ 911.69 Derogation.

Nothing contained in this part is, or shall be construed to be, in derogation or in modification of the rights of the Secretary or of the United States (a) to exercise any powers granted by the act or otherwise, or (b) in accordance with such powers, to act in the premises whenever such action is deemed advisable.

§ 911.70 Personal liability.

No member or alternate member of the committee and no employee or agent of the committee shall be held personally responsible, either individually or jointly with others, in any way whatsoever, to any person for errors in judgment, mistakes, or other acts, either of commission or omission, as such member, alternate, employee, or agent, except for acts of dishonesty, willful misconduct, or gross negligence.

§ 911.71 Separability.

If any provision of this part is declared invalid or the applicability thereof to any person, circumstance, or thing is held invalid, the validity of the remainder of this part or the applicability thereof to any other person, circumstance, or thing shall not be affected thereby.

Subpart—Rules and Regulations

§ 911.110 Exemption certificates.

Exemption certificates under § 911.50 shall be issued by the Florida Lime Administrative Committee pursuant to the following rules and regulations:

(a) The grower must make application for exemption on a form supplied by the committee. A separate application must be made for each variety or classification of limes and shall contain the following:

(1) Name and mailing address of the applicant;

(2) Location (from established landmarks) of grove from which limes are to be shipped pursuant to the requested exemption certificate;

(3) Regulation from which exemption is requested;

(4) The reasons for requesting exemption from such regulation;

(5) Date when it is proposed to ship the limes for which exemption is requested; and

(6) Certification as to the correctness of the information contained in the application.

(b) Upon receipt of an application for exemption certificate, the Florida Lime Administrative Committee shall check all information furnished by the applicant and shall conduct such investigations concerning the grade, size, and quality of the applicant's limes as may be necessary to determine whether the application shall be approved or denied.

(c) Approval of the application shall be evidenced by the issuance to the applicant, by the Manager of the Florida Lime Administrative Committee on its behalf, of one or more exemption certificates which shall authorize the handling of such quantity of the appli-

cant's limes as may be necessary to accomplish the purposes of § 911.50.

(d) If the application is denied, the applicant shall be informed of such denial by written notice stating the reasons therefor.

[20 FR 6018, Aug. 18, 1955. Redesignated at 26 FR 12751, Dec. 30, 1961, and amended at 43 FR 39321, Sept. 5, 1978]

§ 911.115 Nomination procedure.

(a) Any grower who resides outside the production area and desires to be represented at a particular nomination meeting by a duly authorized agent and to participate through such agent in the nomination and election of nominees for grower members and alternate members to fill positions on the Florida Lime Administrative Committee, as provided in § 911.22(b)(2), shall submit to the committee, prior to such meeting but not later than January 20, a written statement containing the following:

(1) Name of grower;

(2) Mailing address;

(3) Location of each lime grove (either legal or from established landmarks);

(4) Number of lime trees owned;

(5) Number of 55-pound units of limes marketed to date during the current season;

(6) Name of the handler of the fruit marketed;

(7) Authorization, including the name and address, of the person who is to represent said grower at the nomination meeting.

(b) Any grower who has not filed the statement as prescribed in paragraph (a) of this section must be present at the nomination meeting and cast his own vote for it to be counted in connection with the nomination and election of nominees.

(c) Notwithstanding that a grower has authorized an agent to cast his vote as specified in paragraph (a) of this section, such grower may appear at the nomination meeting and cast his vote in person to the exclusion of such agent.

[23 FR 8974, Nov. 19, 1958. Redesignated at 26 FR 12751, Dec. 30, 1961]

§ 911.120 Handler registration.

(a) Each handler who desires to handle limes pursuant to the exemptions in § 911.10 shall, prior thereto, register with the committee. Such registration shall be by application for registration filed with the Florida Lime Administrative Committee on a form, prescribed and furnished by the committee, which shall contain the following information:

(1) Business name of applicant;

(2) Applicant's business location and mailing address;

(3) Type of business organization (individual, corporation, partnership, etc.);

(4) If other than an individual, the names and addresses of officers, partners, and principal stockholders or others having financial interest in the business;

(5) Nature of business (Handler trucker, wholesaler, etc.);

(6) Number of years engaged in lime business;

(7) Estimated seasonal volume of limes handled;

(8) Name and address of three references, one of which shall be a bank;

(9) Certification as to accuracy of information furnished; and

(10) An agreement to comply with the provisions of this part.

(b) When the committee receives an application for registration, it shall issue the applicant a certificate of registration, if it determines based upon an investigation that the applicant may be expected to handle limes in accordance with this part.

(c) If it is determined from the available information that the applicant is not entitled to be registered with the committee, he shall be so informed by written notice stating why the certificate of registration was not issued.

(d) Any certificate of registration issued to a handler pursuant to this section may be canceled by the committee under circumstances which would have justified denial of his application.

(e) The committee shall suspend the certificate of registration issued under this section of any handler who fails to pay assessments or furnish reports as required under this part, and so

advise the handler in writing of the suspension and the effective date. The committee shall lift such suspension at such time as the handler pays such assessments and furnishes such reports, and the committee determines that the handler may be expected to handle limes in the future in accordance with this part.

[20 FR 6018, Aug. 18, 1955. Redesignated at 26 FR 12751, Dec. 30, 1961, and amended at 49 FR 33203, Aug. 22, 1984]

§ 911.130 Limes not subject to regulation.

(a) *Minimum quantity.* During any one day any handler may handle not to exceed 55 pounds total of limes exempt from the provisions of §§ 911.41, 911.51, and 911.54, and the regulations issued thereunder: *Provided,* That such exempted quantity shall not be included as part of a shipment exceeding 55 pounds.

(b) *Gift shipments.* Any handler may, exempt from the provisions of §§ 911.41, 911.48, and 911.51, and the regulations issued thereunder, handle limes in individually addressed gift containers not exceeding 20 pounds net weight for use by the addressee other than for resale.

(c) *Commercial processing into products.* The term "commercial processing into products," as used in § 911.52(c) means the manufacture of any lime product which has been preserved by any recognized commercial process, including canning, freezing, dehydrating, drying, the addition of chemical substances, or by fermentation. Limes handled for conversion into juice without further processing or preservative treatment, as herein described, shall be deemed fresh limes subject to all regulations under this part.

[21 FR 3413, May 23, 1956, as amended at 23 FR 9259, Nov. 29, 1958. Redesignated at 26 FR 12751, Dec. 30, 1961, and amended at 30 FR 10834, Aug. 20, 1965; 43 FR 39321, Sept. 5, 1978]

§ 911.131 Limes for processing.

(a) No person shall handle any limes for commercial processing into products unless (1) such limes meet the applicable grade, size, and quality requirements in effect pursuant to § 911.52; or (2) prior to such handling such person notifies the Florida Lime Administrative Committee of the proposed handling and furnishes such committee with a statement executed by the intended processor that the limes will be used for the stated purpose only; or (3) the processor is an approved manufacturer of lime products, as prescribed in paragraph (b) of this section.

(b) Any person who desires to buy, as an approved manufacturer of lime products, limes for commercial processing shall, prior thereto, submit to the Florida Lime Administrative Committee an application containing the following information: (1) Name and address of applicant; (2) location of processing facilities; (3) proposed type of product or products to be made or derived from limes; (4) description of facilities for processing limes; (5) quantity of limes processed during the previous year and estimate of quantity to be processed during current year; (6) expected source of limes for processing; (7) method of transporting and unloading point; (8) Lime Administrative Committee handler certificate of registration number, if any; (9) a statement that the limes obtained for processing into products will be used for that purpose only and will not be resold or disposed of in fresh fruit channels; and (10) an agreement to submit such reports as are required by the Florida Lime Administrative Committee. Each application shall be investigated by the Florida Lime Administrative Committee. Based upon the results of such investigation and other available information, the committee shall approve or disapprove the application and notify the applicant accordingly. If the application is approved the applicant's name shall be placed upon the list of approved manufacturers of lime products.

[21 FR 6637, Sept. 5, 1956, as amended at 25 FR 11206, Nov. 26, 1960. Redesignated at 26 FR 12751, Dec. 30, 1961]

§ 911.142 Reserve fund.

(a) The establishment of a reserve fund at an amount not to exceed approximately 3 fiscal years' operational expenses is appropriate and necessary to the maintenance and functioning of the Florida Lime Administrative Com-

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mittee. Such reserve, including funds carried forward from prior fiscal years, shall be used to provide for the maintenance and functioning of the committee in accordance with the provisions of the marketing agreement, as amended, and this part.

(b) Terms used in this section shall have the same meaning as when used in said amended marketing agreement and order.

[36 FR 16570, Aug. 24, 1971. Redesignated at 45 FR 47653, July 16, 1980]

§ 911.155 Delinquent assessments.

Each handler shall pay interest of one percent per month on any unpaid assessment balance beginning 30 days after date of billing. Such interest charge is to apply to any unpaid assessments which become due the Florida Lime Administrative Committee after the effective date of this section.

[40 FR 49786, Oct. 24, 1975]

§ 911.160 Public member eligibility requirements and nomination procedures.

(a) Public member and alterate member candidates shall not represent an agricultural interest and shall not have a financial interest in, or be associated with the production, processing, financing, or marketing of limes.

(b) Public member and alterate member candidates should be able to devote sufficient time to attend committee activities regularly and to familiarize themselves with the background and economics of the time industry.

(c) The public member and alterate member shall be a resident of the production area.

(d) The public member and alternate member shall be nominated by the Florida Lime Administrative Committee, and shall serve a one-year term which coincides with the term of the producer and handler members of the committee.

[44 FR 9370, Feb. 13, 1979]

NOTE: After January 1, 1979, "Budget of Expenses and Rate of Assessment" regulations (e.g., sections .200 through .299) and "Handling" regulations (e.g., sections .345 through .399) which are in effect for a year or less, will not be carried in the Code of Federal Regulations. For FEDERAL REGISTER citations affecting these regulations, see the "List of CFR Sections Affected" in this volume.

Subpart—Pack Regulation

§ 911.311 Lime Pack Regulation 9.

(a) *Order.* (1) The grades set forth in the U.S. Standards for Grades of Persian (Tahiti) Limes (7 CFR 51.1000-51.1016) are hereby established as pack specifications for the grading and packing of limes.

(2) On and after November 20, 1980, no handler shall handle any container of limes, of the group known as large fruited or Persian limes (including Tahiti, Bearss and similar varieties), grown in the production area, unless such limes in such container meet the requirements of standard pack and one of the pack specifications established in paragraph (a)(1) of this section, and each container in each lot is marked or stamped on one outside end in letters at least ¼ inch in height to show the United States grade applicable to such lot and either the average juice content of the limes in such lot or the phrase "average juice content forty-two percent (42%) or more": *Provided,* That, in lieu of such marking requirement, any handler may affix to the container a label, brand, or trademark, registered with the Florida Lime Administrative Committee in accordance with the following, which appropriately identifies the grade:

(i) Registration of each label, brand, or trademark with the Florida Lime Administrative Committee shall be on forms prescribed by it and shall be filed with such committee not less than 30 days prior to use in lieu of the foregoing marking requirement.

(ii) A label, brand, or trademark registered with the committee, during a fiscal year, to identify a specific grade may not be reregistered during the same fiscal year to identify any other grade until 30 days after notice of such reregistration has been filed with the committee.

(iii) Each label, brand, or trademark registered with the committee shall include the name and address of the handler and shall be sufficiently dis-

tinctive otherwise that it can be readily identified and distinguished from other registered labels, brands, or trademarks.

(iv) If a label, brand, or trademark is registered by a handler to identify a specific grade, in order for a label, brand, or trademark of practically the same design and lettering with a different color, or additional terms or name, to be registered to represent a different grade, the name of the color and the additional terms or name shall appear on the label, brand, or trademark in block letters of at least one-half (½) inch in height, of contrasting color.

(v) A label, brand, or trademark registered with the committee to identify a specific grade shall not be used on any container packed with limes of a lower grade than that for which the label, brand, or trademark is registered.

(3) On and after November 20, 1980, no handler shall handle any container of limes, grown in the production areas, unless such container is marked with a Federal or Federal-State Inspection Service lot stamp number showing that the limes have been inspected in accordance with regulations issued under § 911.48 of the marketing order.

(4) The provisions of paragraphs (a)(2) and (a)(3) of this section shall not apply to individual packages of limes not exceeding 4 pounds, net weight, that are within master containers except that if such packages are individual bags either such bags or the master containers thereof shall be marked or labeled in accordance with the requirements of paragraph (a)(2) of this section and master containers shall be marked or labeled in accordance with the requirements of paragraph (a)(3) of this section.

(5) No handler shall handle any container of seedless limes, grown in the production area, unless such container is marked on two sides with letters at least one inch in height with one of the size designations shown in column 1 of the following table: *Provided,* That the number of seedless limes in a ten pound sample of a particular size designation, representative of the limes in the container, corresponds to the permissible size range in column 2 of such table for such size designation: *Provided further,* That not more than 10 percent of the containers in any lot may fail to meet these requirements.

TABLE 1

Column 1 size designations	Column 2 size range
72	68 to 76.
63	59 to 67.
54	51 to 58.
48	45 to 51.
42	39 to 44.
36	33 to 38.
28	25 to 32.

(b) Terms used in this section shall mean the same as in the marketing order, and terms relating to grade and standard pack shall mean the same as in the U.S. Standards for Grades of Persian (Tahiti) Limes (7 CFR 51.1000-51.1016).

[29 FR 8461, July 7, 1964, as amended at 43 FR 39321, Sept. 5, 1978; 45 FR 76429, Nov. 19, 1980; 45 FR 80270, Dec. 4, 1980; 50 FR 15097, Apr. 17, 1985; 50 FR 20889, May 21, 1985]

Subpart—Container Regulation

§ 911.329 Lime Regulation 27.

(a)(1) On and after October, 8, 1982, no handler shall handle between the production area and any point outside thereof any variety of limes, grown in the production area, in individual bags having a capacity of more than four pounds net weight of limes.

(2) On and after the effective date hereof no handler shall handle between the production area and any point outside thereof any variety of limes, grown in the production area, in in containers having a capacity of more than 4 pounds of limes unless such limes are handled in containers meeting the following specifications and conform to all other applicable requirements of this section:

(i) Containers with inside dimensions of 11 x 16¾ x 10 inches: *Provided,* That any such containers shall contain not less than 38 pounds nor more than 42 pounds net weight of limes.

(ii) Containers with inside dimensions of 11⅜ x 16 x 11 inches: *Provided,* That any such container shall contain not less than 38 pounds nor more than 42 pounds net weight of limes.

(iii) Containers with inside dimensions of 13½ x 16½ x 9 inches: *Provided,* That any such container shall contain not less than 38 pounds nor more than 42 pounds net weight of limes.

(iv) Containers with inside dimensions of 11¾ by 16 by 6 inches: *Provided,* That any such container shall contain not less than 20 pounds nor more than 22 pounds net weight of limes.

(v) Containers with inside dimensions of 11 by 13¾ by 6 inches: *Provided,* That any such container shall contain not less than 20 pounds nor more than 22 pounds net weight of limes.

(vi) Containers with inside dimensions of 13½ by 16½ by 5 inches: *Provided,* That any such container shall contain not less than 20 pounds nor more than 22 pounds net weight of limes.

(vii) Containers with inside dimensions of 12 by 9⅝ by 3¾ inches: *Provided,* That any such container shall contain not less than 10 pounds net weight of limes.

(viii) Containers with inside dimensions of 12 by 9⅝ by 5 inches: *Provided,* That any such container shall contain not less than 10 pounds nor more than 12 pounds net weight of limes.

(ix) Containers with inside dimensions of 12¾ x 15¼ x 10¾ inches: *Provided,* That any such container shall contain not less than 38 pounds nor more than 42 pounds net weight of limes.

(x) Containers with inside dimensions of 11¼ x 16¾, with depth varying from 7 to 7½ inches: *Provided,* That any such container shall contain not less than 20 pounds nor more than 22 pounds net weight of limes.

(xi) Containers with inside dimensions of 7⅞ x 11¼ x 5⅞ inches: *Provided,* That any such container shall contain not less than 10 pounds nor more than 12 pounds net weight of limes.

(xii) Such other types and sizes of containers as may be approved by the Florida Lime Administrative Committee, with the approval of the Secretary, for testing in connection with a research project conducted by or in cooperation with said committee: *Provided,* That the handling of each lot of limes in such test containers shall be subject to the prior approval, and under the supervision of, the Florida Lime Administrative Committee.

(3) The limitations set forth in paragraph (a)(2) of this section shall not apply to master containers of individual packages, including individual bags of limes: *Provided,* That the individual packages within such master container are of a capacity not exceeding 4 pounds net weight of limes and the markings or labels, if any, on such packages do not conflict with the markings or labels on the master container.

(b) The terms "handler," "handle," "limes," and "production area" when used in this section shall have the same meaning as when used in the amended marketing agreement and this part.

[47 FR 22073, May 21, 1982, as amended at 47 FR 29647, July 8, 1982; 47 FR 45865, Oct. 14, 1982]

Subpart—Grade and Size Requirements

§ 911.344 Florida Lime Regulation 43.

(a) On or after June 5, 1985, no handler shall handle any variety of limes grown in the production area unless:

(1) Such limes of the group known as seeded or true limes (also known as Mexican, West Indian, and Key limes and by other synonyms) meet the requirements specified for U.S. No. 2 Grade limes in the U.S. Standards for Persian (Tahiti) Limes, except as to color: *Provided,* That such limes not meeting these requirements may be handled within the production area, if they meet the minimum juice content requirement of at least 42% by volume specified in the U.S. Standards for Persian (Tahiti) Limes, and if they are handled in containers other than those authorized in § 911.329.

(2) Such limes of the group known as seedless, large-fruited, or Persian limes (including Tahiti, Bearss, and similar varieties) grade at least U.S. Combination, Mixed Color: *Provided,* That stem length shall not be considered a factor of greade; *Provided fur-*

ther, That such limes not meeting these requirements may be handled within the production area, if they meet the minimum juice content requirement of at least 42 percent by volume specified in the U.S. Standards for Persian (Tahiti) limes, if they meet the minimum size requirements specified in paragraph (a)(3) of this section, and if they are handled in containers other than those authorized in section 911.329; and *Provided further,* That during the period June 1 of each year through January 31 of the following year, no handler shall ship such limes to destinations outside the production area unless they grade at least U.S. Combination, Mixed Color, with the stipulation that stem length shall not be a factor of grade and at least 75 percent, by count, of the limes in the lot grade at least U.S. No. 1 and 25 percent, by count, of the limes grade at least U.S. No. 2.

(3) Such limes of the group known as seedless, large-fruited, or Persian limes (including Tahiti, Bearss, and similar varieties) shall be at least 1⅛ inches in diameter; *Provided,* That not more than 10 percent, by count, of the limes in any lot of containers may fail to meet these minimum size requirements; *Provided further,* That not more than 15 percent, by count, in any individual container containing more than four pounds of limes may fail to meet these minimum size requirements.

(b) Terms relating to grade and diameter shall mean the same as in the U.S. Standards for Persian (Tahiti) Limes (7 CFR 2851.1000—2851.1016).

[46 FR 35911, July 13, 1981, as amended at 49 FR 28038, July 10, 1984; 50 FR 23665, June 5, 1985]

PART 912—GRAPEFRUIT GROWN IN THE INDIAN RIVER DISTRICT IN FLORIDA

Subpart—Order Regulating Handling

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AUTHORITY: Secs. 1-19, 48 Stat. 31, as amended; 7 U.S.C. 601-674.

SOURCE: 27 FR 87, Jan. 5, 1962, unless otherwise noted.

Subpart—Order Regulating Handling

DEFINITIONS

§ 912.1 Secretary.

"Secretary" means the Secretary of Agriculture of the United States, or any officer or employee of the Department to whom authority has heretofore been delegated, or to whom authority may hereafter be delegated, to act in his stead.

§ 912.2 Act.

"Act" means Public Act No. 10, 73d Congress (May 12, 1933), as amended and as reenacted and amended by the Agricultural Marketing Agreement Act of 1937, as amended (secs. 1-19, 48 Stat. 31, as amended; 7 U.S.C. 601-674).

§ 912.3 Person.

"Person" means an individual, partnership, corporation, association, or any other business unit.

§ 912.4 Fruit or grapefruit.

"Fruit" or "grapefruit" means any or all varieties of citrus paradisi, MacFadyen grown in the Indian River District.

[28 FR 24, Jan. 1, 1963]

§ 912.5 Producer or grower.

"Producer" is synonymous with "grower" and means any person who is engaged in the production for market of grapefruit in the Indian River District and who has a proprietary interest in the grapefruit so produced.

§ 912.6 Handler or shipper.

"Handler" is synonymous with "shipper" and means any person (except a common or contract carrier transporting grapefruit for another person) who, as owner, agent, or otherwise, handles grapefruit in fresh form, or causes grapefruit to be handled.

§ 912.7 Handle or ship.

"Handle" or "ship" means to sell or transport grapefruit, or in any other way, to place grapefruit in the current of commerce between the regulation area and any point outside thereof.

[37 FR 21309, Oct. 7, 1972]

§ 912.8 Carton or standard packed carton.

"Carton or standard packed carton" means a unit of measure equivalent to four-fifths (⅘) of a United States bushel of grapefruit, whether in bulk or in any container.

[42 FR 4811, Jan. 26, 1977]

§ 912.9 Fiscal period.

"Fiscal period" means the period of time from August 1 of any year until July 31 of the following year, both dates inclusive: *Provided,* That the initial fiscal period shall begin on the effective date of this part.

§ 912.10 Committee.

"Committee" means Indian River Grapefruit Committee.

§ 912.11 Central marketing organization.

"Central marketing organization" means any organization which markets grapefruit for more than one handler pursuant to a written contract between such organization and each such handler.

§ 912.12 Regulation area.

"Regulation area" means that portion of the State of Florida which is bounded by the Suwannee River, the Georgia border, the Atlantic Ocean, and the Gulf of Mexico.

§ 912.13 Indian River District or district.

"Indian River District" or "district" means that part of the State of Florida particularly described as follows: Beginning at a point on the shore of

the Atlantic Ocean where the line between Flagler and Volusia Counties intersects said shore, thence follow the line between said two counties to the southwest corner of Section 23, Township 14 South, Range 31 East; thence continue south to the southwest corner of Section 35, Township 14 South, Range 31 East; thence east to the northwest corner of Township 18 South, Range 32 East; thence south to the southwest corner of Township 17 South, Range 32 East; thence east to the northwest corner of Township 18 South, Range 33 East, thence south to the St. Johns River; thence along the main channel of the St. Johns River and through Lake Harney, Lake Poinsett, Lake Winder, Lake Washington, Sawgrass Lake, and Lake Helen Blazes to the range line between Ranges 35 East and 36 East; thence south to the south line of Brevard County; thence east to the line between Ranges 36 East and 37 East; thence south to the southwest corner of St. Lucie County; thence east to the line between Ranges 39 East and 40 East; thence south to the south line of Martin County; thence east to the line between Ranges 40 East and 41 East; thence south to the West Palm Beach Canal (also known as the Okeechobee Canal); thence follow said canal eastward to the mouth thereof; thence east to the shore of the Atlantic Ocean; thence northerly along the shore of the Atlantic Ocean to the point of beginning.

Administrative Body

§ 912.20 Establishment and membership.

There is hereby established an Indian River Grapefruit Committee consisting of twelve members, each of whom shall have an alternate who shall be nominated and selected in the same manner, and who shall have the same qualifications, as the member for whom each is an alternate. Six of the members and their respective alternates shall be growers who shall not be handlers, or employees of handlers, or employees of central marketing organizations. Six of the members and their respective alternates shall be handlers, or employees of handlers, or employees of central marketing organizations.

§ 912.21 Term of office.

The term of office of members and alternate members shall begin on the first day of August and continue for one year. Members and alternate members shall serve in such capacities for the portion of the term of office for which they are selected and have qualified and until their successors are selected and have qualified. The consecutive terms of office of a member shall be limited to three terms. The terms of office of alternate members shall not be so limited.

§ 912.22 Nomination of grower members for the Indian River Grapefruit Committee.

(a) The Secretary shall give public notice of a meeting or meetings of producers to be held not later than July 10th of each year, for the purpose of making nominations for grower members and alternate members of the committee: *Provided*, That the initial nomination meeting or meetings shall be held as soon as practicable following the effective date of this part.

(b) The Secretary shall prescribe uniform rules to govern such meeting or meetings and the balloting thereat. The chairman of each meeting shall publicly announce at such meeting the names of the persons nominated and the total number of votes cast for each, and the chairman and secretary of each such meeting shall transmit to the Secretary their certificate as to the number of votes so cast, the names of the persons nominated, and such other information as the Secretary may request. All nominations shall be submitted to the Secretary on or before the 20th day of July, except that the nomination made for membership on the initial committee shall be so submitted within 10 days after the close of the nomination meetings.

§ 912.23 Selection of grower members of the Indian River Grapefruit Committee.

From the nominations made pursuant to § 912.22, or from other qualified persons, the Secretary shall select six

members and six alternate members of the committee. Three such members and their alternates shall be affiliated with bona fide cooperative fresh fruit marketing organizations, and three such members and their alternates shall not be so affiliated.

§ 912.24 Nomination of handler members for the Indian River Grapefruit Committee.

(a) The Secretary shall give public notice of meetings of handlers to be held not later than July 10th of each year, for the purpose of making nominations for handler members and alternate members of the committee: *Provided,* That the initial nomination meetings shall be held as soon as practicable following the effective date of this part. Separate meetings shall be held for bona fide cooperative marketing organizations and for other handlers.

(b) The committee, as soon as practicable after issuance of the amendment to this part and every third year thereafter, not later than the date prescribed in paragraph (a) of this section, shall reallocate the six handler member and six handler alternate member positions for which voting for nominees is to take place. All such meetings, voting for nominees shall be in accordance with representation which may be required as a result of any reallocation. The reallocation of committee member and alternate member positions shall be between handlers affiliated with bona fide cooperative fresh fruit marketing organizations, herein referred to as "cooperative" handlers, and handlers not so affiliated, herein referred to as "independent" handlers, on the basis of the relative amounts of grapefruit shipped by each group during each of the three immediately preceding completed crop years. The committee shall make its recommendation for allocating handler member positions to the Secretary. The following percentages of grapefruit shipments shall be used by the committee as a basis for allocating handler member and alternate member representation: *Provided,* That the committee, with the approval of the Secretary, may modify the percentage and/or allocation, whenever necessary to meet changing circumstances; *Provided,* That in no event shall any group be allocated less than one member.

Percentages of grapefruit shipped previous 3-year period		Allocation of handler members	
Cooperatives	Independents	Cooperatives	Independents
Under 25	75 and above	1	5
25 through 41.99	58 through 74.99	2	4
42 through 57.99	42 through 57.99	3	3
58 through 74.99	25 through 41.99	4	2
75 and above	Under 25	5	1

(c) The Secretary shall prescribe uniform rules to govern such meetings and the balloting thereat. In voting for nominees each handler shall be entitled to cast but one vote, which shall be weighted by the volume of fruit shipped by such handler during the then current fiscal period: *Provided,* That each such vote cast at the meetings to nominate the initial members and alternate members shall be weighted by the volume of fruit handled by such handler during the preceding fiscal period. The chairman of each meeting shall publicly announce at such meeting the names of the persons nominated and the total number of votes cast for each, and the chairman and secretary of each such meeting shall transmit to the Secretary their certificate as to the number of votes so cast, the names of the persons nominated, and such other information as the Secretary may request. All nominations shall be submitted to the Secretary on or before the 20th day of July, except that the nominations made for membership on the initial committee shall be so submitted within 10 days after the close of the nomination meetings.

[27 FR 87, Jan. 5, 1962, as amended at 42 FR 4812, Jan. 26, 1977]

§ 912.25 Selection of handler members of the Indian River Grapefruit Committee.

From the nominations made pursuant to § 912.24, or from other qualified persons, the Secretary shall select six members and six alternate members of the committee. Three such members and their alternates shall be affiliated with bona fide cooperative fresh fruit marketing organizations, and three such members and their alternates shall not be so affiliated: *Provided,* That when membership is reallocated as provided in § 912.24(b), selection shall reflect such reallocation.

[42 FR 4812, Jan. 27, 1977]

§ 912.26 Failure to nominate.

In the event nominations for a member or an alternate member of the committee are not made pursuant to the provisions of § 912.22 or § 912.24 the Secretary may select such member or alternate member without regard to nominations.

§ 912.27 Acceptance of membership.

Any person selected by the Secretary as a member or alternate member of the committee shall qualify by filing a written acceptance with the Secretary within 10 days after being notified of such selection.

§ 912.28 Inability of members to serve.

(a) An alternate for a member of the committee shall act in the place and stead of such member (1) in his absence, or (2) in the event of his removal, resignation, disqualification, or death, and until a successor for his unexpired term has been selected.

(b) In the event of the death, removal, resignation, or disqualification of any person selected by the Secretary as a member or an alternate member of the committee, a successor for the unexpired term of such person shall be selected by the Secretary. Such selection may be made without regard to the provisions of this subpart as to nominations.

§ 912.29 Powers of the Indian River Grapefruit Committee.

The committee, in addition to the power to administer the terms and provisions of this subpart, as herein specifically provided, shall have power (a) to make, only to the extent specifically permitted by the provisions contained in this subpart, administrative rules and regulations; (b) to receive, investigate and report to the Secretary complaints of violations of this subpart; and (c) to recommend to the Secretary amendments to this subpart.

§ 912.30 Duties of the Indian River Grapefruit Committee.

It shall be the duty of the committee:

(a) To select a chairman from its membership, and to select such other officers and adopt such rules and regulations for the conduct of its business as it may deem advisable;

(b) To keep minutes, books, and records which will clearly reflect all of its acts and transactions, which minutes, books, and records shall at all times be subject to the examination of the Secretary;

(c) To act as intermediary between the Secretary and producers and handlers;

(d) To furnish the Secretary with such available information as he may request;

(e) To appoint such employees as it may deem necessary and to determine the salaries and define the duties of such employees;

(f) To cause its books to be audited by one or more certified or registered public accountants at least once for each fiscal period, and at such other times as it deems necessary or as the Secretary may request, and to file with the Secretary copies of all audit reports;

(g) To prepare and publicly issue a monthly statement of financial operations of the committee; and

(h) To provide an adequate system for determining the total crop of grapefruit, and to make such determinations, as it may deem necessary, or as may be prescribed by the Secretary, in connection with the administration of this subpart.

§ 912.31 Compensation and expenses of committee members.

The members and alternate members of the committee shall serve without compensation but may be reimbursed for expenses necessarily incurred by them in attending committee meetings and in the performance of their duties under this subpart.

§ 912.32 Procedure of committee.

(a) Except as provided in paragraph (b) of this section, eight members of the committee shall constitute a quorum and any decision or action of the committee shall require at least eight concurring votes.

(b) For any decision or recommendation with respect to regulations to be effective during any calendar week, members shall constitute a quorum and nine concurring votes shall be required: *Provided,* That the quorum necessary to make a recommendation for regulation for any week immediately following three or more continuous weeks of regulation shall be twelve members and twelve concurring votes shall be required. The requirements of this paragraph shall not apply to recommendations to amend an existing regulation.

(c) The votes of each member cast for or against any recommendations made pursuant to this subpart, shall be duly recorded. Each member must vote in person.

(d) In the event any member of the committee and his alternate are not present at any meeting of the committee, any alternate for any other member selected by a majority of the committee present, may serve in the place and stead of the absent member and his alternate: *Provided,* That, to the extent practical, the representation provided in §§ 912.23 and 912.25 shall be maintained.

(e) The committee shall give to the Secretary the same notice of meetings of the committee as is given to the members thereof.

[27 FR 87, Jan. 5, 1962, as amended at 42 FR 4812, Jan. 26, 1977]

§ 912.33 Funds.

(a) All funds received by the committee pursuant to the provisions of this subpart shall be used solely for the purposes herein specified and shall be accounted for in the manner provided in this subpart.

(b) The Secretary may, at any time, require the committee and its members to account for all receipts and disbursements.

(c) Upon the removal or expiration of the terms of office of any member of the committee, such member shall account for all receipts and disbursements and deliver all property and funds, together with all books and records in his possession, to his successor in office, and shall execute such assignments and other instruments as may be necessary or appropriate to vest in such successor full title to all of the property, funds, and claims vested in such member pursuant to this subpart.

EXPENSES AND ASSESSMENTS

§ 912.40 Expenses.

The committee is authorized to incur such expenses as the Secretary finds are reasonable and necessary to carry out the functions of the committee under this subpart during each fiscal period. The funds to cover such expenses shall be acquired by the levying of assessments upon handlers as provided in § 912.41.

§ 912.41 Assessments.

(a) Each handler who first handles fruit shall pay to the committee, upon demand, such handler's pro rata share of the expenses which the Secretary finds will be incurred by such committee for its maintenance and functioning during each fiscal period. Each such handler's share of such expenses shall be that proportion thereof which the total quantity of fruit shipped by such handler as the first handler thereof during the applicable fiscal period is of the total quantity of fruit so shipped by all handlers during the same fiscal period. The Secretary shall fix the rate of assessment per standard packed carton of fruit to be paid by each such handler. The payment of assessments for the maintenance and functioning of the committee may be required under this part throughout the period it is in effect irrespective of

whether particular provisions thereof are suspended or become inoperative.

(b) At any time during or after the fiscal period, the Secretary may increase the rate of assessment so that the sum of money collected pursuant to the provisions of this section shall be adequate to cover the said expenses. Such increase shall be applicable to all fruit shipped during the given fiscal period. In order to provide funds to carry out the functions of the committee, handlers may make advance payment of assessments.

[27 FR 87, Jan. 5, 1962, as amended at 42 FR 4811, Jan. 26, 1977]

§ 912.42 Handler's accounts.

If, at the end of a fiscal period the assessments collected are in excess of expenses incurred, the committee, with the approval of the Secretary, may carry over such excess into subsequent fiscal periods as a reserve: *Provided,* That funds already in the reserve do not exceed approximately one fiscal period's expenses. Such reserve funds may be used (a) to cover any expenses authorized by this part and (b) to cover necessary expenses of liquidation in the event of termination of this part. If any such excess is not retained in a reserve, each handler entitled to a proportionate refund shall be credited with such refund against the operations of the following fiscal period unless he demands payment of the sum due him, in which case such sum shall be paid to him. Upon termination of this part, any funds not required to defray the necessary expenses of liquidation shall be disposed of in such manner as the Secretary may determine to be appropriate: *Provided,* That to the extent practical, such funds shall be returned pro rata to the persons from whom such funds were collected.

[28 FR 12248, Nov. 19, 1963]

Regulation

§ 912.45 Marketing policy.

(a) Prior to the first recommendation for regulation during any marketing season, the committee shall submit to the Secretary its marketing policy for such season. Such marketing policy shall contain the following information: (1) The estimated available crop of grapefruit in the district, including estimated quality; (2) the estimated utilization of the crop that will be marketed in domestic, export, and byproduct channels, together with quantities otherwise to be disposed of; (3) a schedule of estimated weekly shipments of grapefruit during the ensuing season; (4) the available supplies of competitive deciduous fruits in all producing areas of the United States; (5) level and trend in consumer income; (6) estimated supplies of competitive citrus commodities; and (7) any other pertinent factors bearing on the marketing of grapefruit. In the event that it becomes advisable substantially to modify such marketing policy, the committee shall submit to the Secretary a revised marketing policy.

(b) All meetings of the committee held for the purpose of formulating such marketing policies shall be open to growers and handlers.

(c) The committee shall transmit a copy of each marketing policy report or revision thereof to the Secretary and to each grower and handler who files a request therefor. Copies of all such reports shall be maintained in the office of the committee where they shall be available for examination by growers and handlers.

§ 912.46 Recommendations for volume regulation.

(a) The committee may, during any week, recommend to the Secretary the total quantity of grapefruit which it deems advisable to be handled to destinations outside the regulation area but within the 48 contiguous States of the United States (including the District of Columbia), Canada, or Mexico during the next succeeding week: *Provided,* That such regulations shall not be recommended during the period beginning with and including the first full week in January and ending with but not including the first full week in May after regulations during such period have limited the volume of grapefruit handled during 12 weeks.

(b) In making its recommendations, the committee shall give due consider-

ation to the following factors: (1) Market prices for grapefruit; (2) supply of grapefruit on track at, and en route to, the principal markets; (3) supply, maturity, and condition of grapefruit in the production area; (4) market prices and supplies of citrus fruits from competitive producing areas, and supplies of other competitive fruits; (5) trend and level in consumer income; and (6) other relevant factors.

(c) At any time during a week for which the Secretary, pursuant to § 912.47, has fixed the quantity of grapefruit which may be handled, the committee may recommend to the Secretary that such quantity be increased for such week. Each such recommendation, together with the committee's reason for such recommendation, shall be submitted promptly to the Secretary.

[27 FR 87, Jan. 5, 1962, as amended at 28 FR 23, Jan. 1, 1963; 37 FR 21309, Oct. 7, 1972]

§ 912.47 Issuance of volume regulation.

Whenever the Secretary finds, from information submitted by the committee, or from other available information, that to limit the quantity of grapefruit which may be handled to destinations outside the regulation area but within the 48 contiguous States of the United States (including the District of Columbia), Canada, or Mexico during a specified week will tend to effectuate the declared policy of the act, he shall fix such quantity: *Provided*, That such regulations shall not, in the aggregate, limit the volume of grapefruit shipments during more than 12 weeks of the period beginning with and including the first full week in January and ending with but not including the first full week in May. Such regulations may, as authorized by the act, be made effective irrespective of whether the season average price of grapefruit is in excess of the parity price specified therefor in the act. The quantity so fixed for any week may be increased by the Secretary at any time during such week. The Secretary may upon the recommendation of the committee, or upon other available information, terminate or suspend any regulation at any time.

[37 FR 21309, Oct. 7, 1972]

§ 912.48 Prorate bases.

(a) Each person who desires to handle grapefruit, shall submit to the committee, at such time and in such manner as may be designated by the committee, and upon forms made available by it, a written application for a prorate base and for allotments as provided in this section and § 912.49.

(b) Such application shall be substantiated in such manner and shall be supported by such information as the committee may require.

(c) The committee shall determine the accuracy of the information submitted pursuant to this section. Whenever the committee finds that there is an error, omission, or inaccuracy in any such information, it shall correct the same and shall give the person who submitted the information a reasonable opportunity to discuss with the committee the factors considered in making the correction.

(d) Each week during the marketing season when volume regulation is likely to be recommended for the following week, the committee shall compute a prorate base for each handler who has made application in accordance with the provisions of this section. The prorate base for each such handler shall be computed by adding together the handler's shipments of grapefruit in the current season and his shipments in the immediately preceding seasons, if any, within the representative period, in which he shipped grapefruit and dividing such total by a divisor computed by adding together the number of weeks elapsed in the current season and 51 weeks for each of such immediately preceding seasons within the representative period in which the handler shipped grapefruit. For purposes of this section "representative period" means the three preceding seasons together with the current season; the term "season" means the 51-week period beginning with the first full week in August of any year; and the term "current season" means the period beginning with the first full week in August of the current fiscal period through the fourth full week preceding the

week of regulation: *Provided*, That when official shipping records are available to the committee the said "current season" shall extend through the third full week preceding the week of regulation.

[27 FR 87, Jan. 5, 1962, as amended at 34 FR 12881, Aug. 8, 1969]

§ 912.49 Allotments.

Whenever the Secretary has fixed the quantity of grapefruit which may be handled during any week, the committee shall calculate the quantity of grapefruit which may be handled during such week by each person who has applied for a prorate base. Such quantity shall be the allotment of such person and shall be that portion of the total quantity fixed by the Secretary which, expressed in terms of percent, is equal to the percentage that such applicant's prorate base is of the aggregate of the prorate bases of all such applicants. The committee shall give reasonable notice to each person of the allotment computed for him pursuant to this section.

§ 912.50 Overshipments.

During any week for which the Secretary has fixed the total quantity of grapefruit which may be handled, any person who has received an allotment may handle, in addition to the total allotment available to him, an amount of grapefruit equivalent to 10 percent of such total allotment or 1,000 cartons, whichever is greater: *Provided*, That the Secretary, on the basis of a recommendation of the committee or other available information, may set such amount at any figure not less than 1,000 cartons and not more than 2,000 cartons. Handlers may overship (a) during such week the entire 1,000 cartons or other amount not in excess of 2,000 cartons as may be set by the Secretary, or (b) during two or more consecutive weekly periods when regulations are in effect, any portion of such 1,000 cartons or any other amount set by the Secretary until the accumulated overshipments reach the applicable maximum number of boxes permitted to be overshipped. The quantity of grapefruit so overshipped when regulations are in effect shall be deducted from such person's allotment for the week following the one in which the total permitted overshipment is reached or for the week in which such person makes no shipments of grapefruit. If such person's allotment for such week is an amount less than the excess shipments permitted under this section, the remaining quantity shall be deducted from succeeding weekly allotments issued to such person until such excess has been entirely offset: *Provided*, That any time there is no volume regulation in effect it shall be deemed to cancel all requirements to undership allotment because of previous overshipments pursuant to this part.

[42 FR 4811, Jan. 26, 1977]

§ 912.51 Undershipments.

If any person handles during any week a quantity of grapefruit, covered by a regulation issued pursuant to § 912.47, in an amount less than the total allotment available to him for such week, he may handle, during the next succeeding week, a quantity of grapefruit, in addition to that permitted by the allotment available to him for such week, equivalent to such undershipment or 50 percent of the allotment issued to him for the week during which the undershipment was made, whichever is the lesser: *Provided*, That the committee, with the approval of the Secretary, may increase or decrease such percentage.

§ 912.52 Allotment loans or transfers.

(a) A person to whom allotments have been issued may lend or transfer all or part of such allotment to another such person.

(1) In connection with a loan of allotment, each party to any such loan agreement shall, prior to completion of the agreement, notify the committee of the proposed loan and the date of repayment, and obtain the committee's approval of the agreement.

(2) In connection with the transfer of allotment, each party shall promptly notify the committee so that proper adjustments of records can be made.

(b) The committee may act on behalf of persons desiring to arrange allotment loans or participate in the transfer of allotment. In each case the

committee shall confirm all such transactions immediately after the completion thereof by memorandum addressed to the parties concerned, which memorandum shall be deemed to satisfy the requirements of paragraph (a) of this section as to notifying the committee and obtaining committee approval.

[34 FR 12882, Aug. 8, 1969]

§ 912.53 Inspection and certification.

Whenever the handling of grapefruit is regulated pursuant to § 912.47, each handler who handles any grapefruit shall, prior to the handling of any lot of grapefruit, cause such lot to be inspected by the Federal or Federal-State Inspection Service and certified by it as meeting all applicable requirements of such regulation: *Provided,* That such inspection and certification shall not be required if the particular lot of fruit previously had been so inspected and certified.

Reports

§ 912.60 Reports.

Upon request of the committee, made with approval of the Secretary, each handler shall maintain such records and furnish to the committee, in such manner and at such time as it may prescribe, reports of overshipments and undershipments and such other reports and information as may be necessary for the committee to perform its duties under this part.

Miscellaneous Provisions

§ 912.65 Fruit not subject to regulation.

Except as otherwise provided in this section, any person may, without regard to the provisions of §§ 912.47 through 912.53 and the regulations issued thereunder, ship grapefruit for the following purposes: (a) To a charitable institution for consumption by such institution; (b) to a relief agency for distribution by such agency; (c) to a commercial processor for conversion by such processor into canned or frozen products or into a beverage base; (d) by parcel post; and (e) in such minimum quantities, types of shipments, or for such purposes as the committee with the approval of the Secretary may specify. No assessment shall be levied on fruit so shipped. The committee shall, with the approval of the Secretary, prescribe such rules, regulations, or safeguards as it may deem necessary to prevent grapefruit handled under the provisions of this section from entering channels of trade for other than the purposes authorized by this section. Such rules, regulations, and safeguards may include the requirements that handlers shall file applications with the committee for authorization to handle grapefruit pursuant to this section, and that such applications be accompanied by a certification by the intended purchaser or receiver that the grapefruit will not be used for any purpose not authorized by this section.

§ 912.66 Compliance.

Except as provided in this part, no person shall handle grapefruit during any week in which a regulation issued by the Secretary pursuant to § 912.47 is in effect, unless such grapefruit are, or have been, handled pursuant to an allotment therefor, or unless such person is otherwise permitted to handle such grapefruit under the provisions of this part; and no person shall handle grapefruit except in conformity with the provisions of this part and the regulations issued under this part.

§ 912.67 Right of the Secretary.

The members of the committee (including successors and alternates), and any agents, employees, or representatives thereof, shall be subject to removal or suspension by the Secretary at any time. Each and every regulation, decision, determination, or other act of the committee shall be subject to the continuing right of the Secretary to disapprove of the same at any time. Upon such disapproval, the disapproved action of the committee shall be deemed null and void, except as to acts done in reliance thereon or in compliance therewith prior to such disapproval by the Secretary.

§ 912.68 Effective time.

The provisions of this part shall become effective at such time as the

Secretary may declare above his signature to this part, and shall continue in force until terminated in one of the ways specified in § 912.69.

§ 912.69 Termination.

(a) The Secretary may at any time terminate the provisions of this part by giving at least one day's notice by means of a press release or in any other manner which he may determine.

(b) The Secretary shall terminate the provisions of this part at the end of any fiscal period whenever he finds that such termination is favored by a majority of producers who, during the preceding fiscal period, have been engaged in the production for market of fruit: *Provided,* That such majority have, during such period, produced for market more than 50 percent of the volume of such fruit produced for market, but such termination shall be effective only if announced on or before July 31 of the then current fiscal period.

(c) The provisions of this part shall, in any event, terminate whenever the provisions of the act authorizing it cease to be in effect.

§ 912.70 Proceedings after termination.

(a) Upon the termination of the provisions of this part, the then functioning members of the committee shall continue as joint trustees, for the purpose of liquidating the affairs of the same committee, of all the funds and property then in the possession of or under control of such administrative committee, including claims for any funds unpaid or property not delivered at the time of such termination.

(b) The said trustees (1) shall continue in such capacity until discharge by the Secretary; (2) shall, from time to time, account for all receipts and disbursements, or deliver all property on hand, together with all books and records of the committee and of the joint trustees, to such person as the Secretary may direct; and (3) shall, upon the request of the Secretary, execute such assignments or other instruments necessary or appropriate to vest in such person full title and right to all of the funds, property, and claims vested in the committee, or the joint trustees pursuant to this part.

(c) Any funds collected pursuant to § 912.41, over and above the amounts necessary to meet outstanding obligations and expenses necessarily incurred during the operation of this part and during the liquidation period, shall be returned to handlers as soon as practicable after the termination of this part. The refund to each handler shall be represented by the excess of the amount paid by him over and above his pro rata share of the expenses.

(d) Any person to whom funds, or claims have been transferred or delivered by the committee, or its members, pursuant to this section, shall be subject to the same obligations imposed upon the members of said committee and upon the said joint trustees.

§ 912.71 Duration of immunities.

The benefits, privileges, and immunities conferred upon any person by virtue of this part shall cease upon its termination, except with respect to acts done under and during the existence of this part.

§ 912.72 Agents.

The Secretary may, by designation in writing, name any person, including any officer or employee of the Government, or name any bureau or division in the United States Department of Agriculture, to act as his agent or representative in connection with any of the provisions of this part.

§ 912.73 Derogation.

Nothing contained in this part is, or shall be construed to be in derogation or in modification of the rights of the Secretary or of the United States (a) to exercise any powers granted by the act or otherwise, or (b) in accordance with such powers, to act in the premises whenever such action is deemed advisable.

§ 912.74 Personal liability.

No member or alternate of the committee, nor any employee or agent thereof, shall be held personally responsible, either individually or jointly

with others, in any way whatsoever, to any handler or to any other person for errors in judgment, mistakes, or other acts, either of commission or omission, as such member, alternate, or employee, except for acts of dishonesty.

§ 912.75 Separability.

If any provision of this part is declared invalid, or the applicability thereof to any person, circumstance, or thing is held invalid, the validity of the remainder of this part or the applicability thereof to any other person, circumstance, or thing shall not be affected thereby.

Subpart—Rules and Regulations

§ 912.120 Nomination procedure.

The designated representative of the Secretary shall hold or cause to be held, not later than July 10 of each year, a meeting, or meetings of growers and handlers, in accordance with the provisions of §§ 912.22 and 912.24, for the purpose of making nominations for members and alternate members of the Indian River Grapefruit Committee. The manner of nominating members and alternate members of said committee shall be as follows:

(a) At each such meeting the Secretary's representative shall announce the requirements as to eligibility for voting for nominees and the procedure for voting, and shall explain the duties of the committee.

(b) A chairman and a secretary of each meeting shall be selected.

(c) At each meeting of growers there shall be presented for nomination and there shall be nominated not less than six grower members, all of whom shall have the qualifications specified in §§ 912.20 and 912.23. Each grower voting at such meeting shall submit his name and address to the chairman or secretary of the meeting.

(d) At each meeting of handlers there shall be presented for nomination and there shall be nominated not less than six handler members, all of whom shall have the qualifications specified in §§ 912.20 and 912.25, as modified by § 912.124. Any person authorized to represent a handler may cast a ballot for such handler. Each person voting at such meeting shall submit his name and address to the chairman or secretary of the meeting.

(e) Voting may be by written ballot, except that in the event there is more than one nominee for a particular position, voting shall be by written ballot for that position. If the voting method used is by written ballot, all ballots shall be delivered by a nomination meeting official to the Secretary's representative. If written ballots are not used, the meeting official shall deliver a listing of each person nominated and the number of votes cast for each and a register of eligible voters who participated in the election. For the handler nomination meetings, documentation shall also include the volume of shipments voted for each nominee.

(f) The Secretary's representative shall give reasonable notice of each meeting to be held pursuant to this section.

[27 FR 92, Jan. 5, 1962, as amended at 44 FR 31611, June 1, 1979]

§ 912.124 Reallocation of handler members of the committee.

The allocation of handler membership on the Indian River Grapefruit Committee is changed to provide as follows:

(a) Two members and their respective alternates shall be affiliated with cooperative marketing organizations; and

(b) Four members and their alternates shall not be so affiliated.

[42 FR 10299, Feb. 22, 1977]

§ 912.140 Undershipments.

If any person handles during any week a quantity of grapefruit, covered by a regulation issued pursuant to § 912.47, in an amount less than the total allotment available to him for such week, he may handle, during the next succeeding week, a quantity of grapefruit, in addition to that permitted by the allotment available to him for such week, equivalent to such undershipment or 25 percent of the allotment issued to him for the week during which the undershipment was made, whichever is the lesser.

[27 FR 5329, June 6, 1962]

§ 912.150 Reporting certain grapefruit shipments.

Whenever a handler ships grapefruit from the Indian River District which make not grown in that district, he shall make a notation on the copy of the manifest of such shipment which he furnishes to the Federal-State Inspection Service clearly indicating that the grapefruit contained in the shipment was not grown in the Indian River District.

[31 FR 2952, Feb. 19, 1966]

§ 912.151 Reporting shipments outside the regulation area.

Prior to shipment of each lot of grapefruit, the handler shall provide the Indian River Grapefruit Committee, or its designated agent, a copy of the shipping manifest applicable to such lot. Such manifest shall indicate whether such fruit is to be transported to a point or points outside the regulation area or within the regulation area, and shall be certified by the handler to the committee as to the correctness of such information shown thereon.

[35 FR 15287, Oct. 1, 1970]

§ 912.152 Overshipment limit.

During any week for which the Secretary has fixed the total quantity of grapefruit which may be handled, any person who has received an allotment may, as authorized by § 912.50, handle, in addition to the total allotment available to him, an amount of grapefruit equivalent to 10 percent of such total allotment or 1,000 boxes, whichever is greater.

[37 FR 9757, May 17, 1972]

NOTE: After January 1, 1979, "Budget of Expenses and Rate of Assessment" regulations (e.g., sections .200 through .299) and "Handling" regulations (e.g., sections .300 through .399) which are in effect for a year or less, will not be carried in the Code of Federal Regulations. For FEDERAL REGISTER citations affecting these regulations, see the "List of CFR Sections Affected" in this volume.

PART 913—GRAPEFRUIT GROWN IN THE INTERIOR DISTRICT IN FLORIDA

Subpart—Order Regulating Handling

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REPORTING CERTAIN GRAPEFRUIT SHIPMENTS

913.150 Reporting certain grapefruit shipments.
913.151 Reporting shipments outside the regulation area.
913.160 Public member eligibility requirements and nomination procedure.

AUTHORITY: Secs. 1-19, 48 Stat. 31, as amended; 7 U.S.C. 601-674.

SOURCE: 30 FR 15204, Dec. 9, 1965, unless otherwise noted.

Subpart—Order Regulating Handling

DEFINITIONS

§ 913.1 Secretary.

"Secretary" means the Secretary of Agriculture of the United States, or any officer or employee of the Department to whom authority has heretofore been delegated, or to whom authority may hereafter be delegated, to act in his stead.

§ 913.2 Act.

"Act" means Public Act No. 10, 73d Congress (May 12, 1933), as amended and as reenacted and amended by the Agricultural Marketing Agreement Act of 1937, as amended (Sec. 1-19, 48 Stat. 31, as amended; 7 U.S.C. 601-674).

§ 913.3 Person.

"Person" means an individual, partnership, corporation, association, or any other business unit.

§ 913.4 Fruit or grapefruit.

"Fruit" or "grapefruit" means any or all varieties of Citrus Paradisi, MacFadyen, grown in the Interior district in the State of Florida.

§ 913.5 Handler or shipper.

"Handler" is synonymous with "shipper" and means any person (except a common or contract carrier transporting grapefruit owned by another person) who, as owner, agent, or otherwise, handles grapefruit in fresh form, or causes grapefruit to be so handled.

§ 913.6 Handle or ship.

"Handle" or "ship" means to sell or transport grapefruit, or in any other way to place grapefruit in the current of commerce between the regulation area and any point outside thereof.

[44 FR 8863, Feb. 12, 1979]

§ 913.7 Carton or standard packed carton.

"Carton or standard packed carton" means a unit of measure equivalent to four-fifths (⅘) of a U.S. bushel of grapefruit, whether in bulk or in any container.

[44 FR 8863, Feb. 12, 1979]

§ 913.8 Producer.

"Producer" is synonymous with "grower" and means any person who is engaged in the production for market of grapefruit in the Interior District and who has a proprietary interest in the grapefruit so produced.

[44 FR 8863, Feb. 12, 1979]

§ 913.9 Fiscal period.

"Fiscal period" means the period of time from August 1, of any year until July 31, of the following year, both dates inclusive: *Provided*, That the initial fiscal period shall begin on the effective date of this part.

[30 FR 15204, Dec. 9, 1965. Redesignated at 44 FR 8864, Feb. 12, 1979]

§ 913.10 Committee.

"Committee" means Interior Grapefruit Marketing Committee.

[30 FR 15204, Dec. 9, 1965. Redesignated at 44 FR 8864, Feb. 12, 1979]

§ 913.11 Regulation area.

"Regulation area" means that portion of the State of Florida which is bounded by the Suwannee River, the

Georgia border, the Atlantic Ocean, and the Gulf of Mexico.

[30 FR 15204, Dec. 9, 1965. Redesignated at 44 FR 8864, Feb. 12, 1979]

§ 913.12 Interior district or district.

"Interior district" or "district" means the production area comprised of the following areas in the State of Florida: The counties of Hillsborough, Pinellas, Manatee, Citrus, Sumter, Hernando, Pasco, Lake, Orange, Osceola, Seminole, Alachua, Putnam, St. Johns, Flagler, Marion, Levy, Duval, Nassau, Baker, Union, Bradford, Columbia, Clay, Gilchrist, Suwannee, Polk, Hardee, Sarasota, Monroe, Highlands, Okeechobee, Glades, De Soto, Charlotte, Lee, Hendry, Collier, Dade, Broward and County Commissioner's Districts One, Two and Three of Volusia County and shall include the portions of the Counties of Brevard, Indian River, Martin, and Palm Beach except as particularly described as follows: Beginning at a point on the shore of the Atlantic Ocean where the line between Flagler and Volusia Counties intersects said shore, thence follow the line between said two counties to the southwest corner of Section 23, Township 14 South, Range 31 East; thence continue south to the southwest corner of Section 35, Township 14 South, Range 31 East; thence east to the northwest corner of Township 15 South, Range 32 East; thence south to the southwest corner of Township 17 South, Range 32 East; thence east to the northwest corner of Township 15 South, Range 33 East; thence south to the St. Johns River; thence along the main channel of the St. Johns River and through Lake Harney, Lake Poinsett, Lake Winder, Lake Washington, Sawgrass Lake, and Lake Helen Blazes to the range line between Ranges 35 East and 36 East; thence south to the south line of Brevard County; thence east to the line between Ranges 36 East and 37 East; thence south to the southwest corner of St. Lucie County; thence east to the line between Ranges 39 East and 40 East; thence south to the south line of Martin County, thence east to the line between Ranges 40 East and 41 East; thence south to the West Palm Beach Canal (also known as the Okeechobee Canal); thence follow said canal eastward to the mouth thereof; thence east to the shore of the Atlantic Ocean; thence northerly along the shore of the Atlantic Ocean to the point of beginning.

[30 FR 15204, Dec. 9, 1965. Redesignated and amended at 44 FR 8864, Feb. 12, 1979]

§ 913.13 Grower districts.

(a) "Grower District 1" shall include the counties of Hillsborough, Pinellas, Pasco, Hernando, Citrus, Sumter, and Lake.

(b) "Grower District 2" shall include the counties of Osceola, Orange, Seminole, Alachua, Putnam, St. Johns, Flagler, Marion, Levy, Duval, Nassau, Baker, Union, Bradford, Columbia, Clay, Gilchrist, and Suwannee, and County Commissioner's Districts 1, 2, and 3 of Volusia County, and that part of the counties of Indian River and Brevard which is included in the Interior District.

(c) "Grower District 3" shall include the counties of Manatee, Sarasota, Hardee, Highlands, Okeechobee, Glades, De Soto, Charlotte, Lee, Hendry, Collier, Monroe, Dade, Broward, and the parts of the counties of Palm Beach and Martin which are included in the Interior District.

(d) "Grower District 4" shall include the county of Polk.

[44 FR 8864, Feb. 2, 1979]

§ 913.14 Redistricting.

(a) The committee may, with the approval of the Secretary, redefine the grower districts into which the Interior District is divided or reapportion or otherwise change the grower membership of grower districts, or both: *Provided,* That the membership shall consist of at least six but not more than seven grower members, and any such change shall be based, so far as practicable, upon the respective averages for the immediately preceding five fiscal periods of (1) the volume of grapefruit shipped from each grower district; (2) the total number of acres of grapefruit in each such district; and (3) the volume of grapefruit produced in each such district.

(b) The committee shall consider such redistricting and reapportion-

ment during the 1980–81 fiscal period, and only in each fifth fiscal period thereafter, and each such redistricting or reapportionment shall be announced on or before March 1 of the then current fiscal period.

[44 FR 8864, Feb. 12, 1979]

ADMINISTRATIVE BODY

§ 913.15 Establishment and membership.

(a) There is hereby established an Interior Grapefruit Marketing Committee consisting of at least 6 but not more than 7 grower members, and 6 shipper members. Grower members shall be persons who are not shippers or employees of shippers. Shipper members shall be shippers or employees of shippers. The committee may be increased by one non-industry member nominated by the committee and selected by the Secretary. The committee, with the approval of the Secretary, shall prescribe qualifications, term of office, and the procedure for nominating the non-industry member.

(b) Each member shall have an alternate who shall have the same qualifications as the member for whom he or she is an alternate.

[44 FR 8864, Feb. 12, 1979]

§ 913.16 Term of office.

The term of office of members and alternate members shall begin on the first day of August and continue for 1 year and until their successors are selected and have qualified. The consecutive terms of members shall be limited to three terms. The consecutive terms of office of alternate members shall not be so limited. Members, their alternates, and their respective successors shall be nominated and selected by the Secretary as provided in § 913.17.

[44 FR 8864, Feb. 12, 1979]

§ 913.17 Nominations.

(a) *Grower members.* (1) The committee shall give public notice of a meeting of producers in each grower district to be held not later than July 10 of each year, for the purpose of making nominations for grower members and alternate grower members. The committee, with the approval of the Secretary, shall prescribe uniform rules to govern such meetings and the balloting thereat. The chairman of each meeting shall publicly announce at such meeting the names of the persons nominated, and the chairman and secretary of each such meeting shall transmit to the Secretary their certification as to the number of votes so cast, the names of the persons nominated, and such other information as the Secretary may request. All nominations shall be submitted to the Secretary on or before the 20th day of July.

(2) Each nominee shall be a producer in the grower district from which he is nominated. In voting for nominees, each producer shall be entitled to cast one vote for each nominee in each of the districts in which he or she is a producer. At least two of the nominees for member and their alternates shall be affiliated with a bona fide cooperative marketing organization, and at least two member nominees and their alternates shall not be so affiliated.

(b) *Shipper members.* (1) The committee shall give public notice of a meeting for bona fide cooperative marketing organizations which are handlers, and a meeting for other handlers who are not so affiliated, to be held not later than July 10 of each year, for the purpose of making nominations for shipper members and their alternates. The committee, with the approval of the Secretary, shall prescribe uniform rules to govern each such meeting and balloting thereat. The chairman of each such meeting shall publicly announce at the meeting the names of the persons nominated and the chairman and secretary of each such meeting shall transmit to the Secretary their certification as to the number of votes cast, the weight by volume of those shipments voted, and such other information as the Secretary may request. All nominations shall be submitted to the Secretary on or before the 20th day of July.

(2) Nominations of at least two members and their alternates shall be made by bona fide cooperative marketing organizations which are handlers. Nominations of at least two members and their alternates shall be made by

handlers who are not so affiliated. In voting for nominees, each handler or his or her authorized representative shall be entitled to cast one vote, which shall be weighted by the volume of fruit shipped by such handler during the then current fiscal period.

[44 FR 8864, Feb. 12, 1979]

§ 913.18 Selection.

(a) The initial members of the committee and their respective alternates shall be the members and alternates of the Citrus Administrative Committee under Order No. 905 (7 CFR Part 905) who are representing the Interior District and who are serving on the effective date of this amendment. Each member and alternate shall serve until a successor has been selected and qualified.

(b) *Successor grower members.* From the nominations made pursuant to § 913.17(a) or from other qualified persons, the Secretary shall select one member and one alternate member each to represent Grower Districts 2 and 3, two members and two alternates to represent Grower District 1, three members and three alternates to represent Grower District 4, or such other number of members and alternate members from each district as may be prescribed pursuant to § 913.14. At least two such members and their alternates shall be affiliated with bona fide cooperative marketing organizations, and at least two such members and their alternates shall not be so affiliated.

(c) *Successor shipper members.* From the nominations made pursuant to § 913.17(b) or from other qualified persons, the Secretary shall select members and alternates of the committee. At least two members and their alternates shall represent bona fide cooperative marketing organizations which are handlers, and at least two members and their alternates shall represent handlers who are not so affiliated.

[44 FR 8864, Feb. 12, 1979]

§ 913.19 Failure to nominate.

In the event nominations for a member or alternate member of the committee are not made pursuant to the provisions of § 913.17, the Secretary may select such member or alternate member without regard to nominations.

[44 FR 8865, Feb. 12, 1979]

§ 913.20 Acceptance of membership.

Any person selected by the Secretary as a member or alternate member of the committee shall qualify by filing a written acceptance with the Secretary within 10 days after being notified of such selection.

[44 FR 8865, Feb. 12, 1979]

§ 913.21 Inability of members to serve.

(a) An alternate for a member of the committee shall act in the place and stead of such member (1) in his or her absence, or (2) in the event of his or her removal, resignation, disqualification, or death, and until a successor for his or her unexpired term has been selected.

(b) In the event of the death, removal, resignation, or disqualification of any person selected by the Secretary as a member or an alternate member of the committee, a successor for the unexpired term of such person shall be selected by the Secretary. Such selection may be made without regard to the provisions of this part as to nominations.

[44 FR 8865, Feb. 12, 1979]

§ 913.22 Powers of the Interior Grapefruit Marketing Committee.

The committee, in addition to the power to administer the terms and provisions of this subpart, as provided in this subpart, shall have the power (a) to make, only to the extent specifically permitted by the provisions contained in this subpart, administrative rules and regulations; (b) to receive, investigate, and report to the Secretary complaints of violations of this subpart; and (c) to recommend to the Secretary amendments to this subpart.

§ 913.23 Duties of the Interior Grapefruit Marketing Committee.

It shall be the duty of the committee:

(a) To select a chairman from its membership, and to select such other

officers and adopt such rules and regulations for the conduct of its business as it may deem advisable;

(b) To keep minutes, books, and records which will clearly reflect all of its acts and transactions, which minutes, books, and records shall at all times be subject to the examination of the Secretary;

(c) To act as intermediary between the Secretary and producers and handlers;

(d) To furnish the Secretary with such available information as he may request;

(e) To appoint such employees as it may deem necessary and to determine the salaries and define the duties of such employees;

(f) To cause its books to be audited by one or more certified or registered public accountants at least once for each fiscal period, and at such other times as it deems necessary or as the Secretary may request, and to file with the Secretary copies of all audit reports;

(g) To prepare and publicly issue a monthly statement of financial operations of the committee; and

(h) To provide an adequate system for determining the total crop of grapefruit, and to make such determinations, as it may deem necessary, or as may be prescribed by the Secretary, in connection with the administration of this subpart.

§ 913.24 Compensation and expenses of committee members.

The members and alternate members of the committee shall serve without compensation but may be reimbursed for expenses necessarily incurred by them in attending committee meetings and in the performance of their duties under this subpart.

§ 913.25 Procedure of committee.

(a) Except as provided in paragraphs (b), (c), and (d) of this section, a majority of the members shall constitute a quorum and any decision or action shall require concurrence by a majority of the committee.

(b) For any recommendation for regulations to be valid, not less than 60 percent of the committee shall concur, except as provided in paragraphs (c) and (d) of this section.

(c) Not less than 80 percent of the committee shall concur to make a recommendation for regulation for any week following 3 or more weeks of continuous regulations, except as provided in paragraph (d) of this section.

(d) Not less than 100 percent of the committee shall concur to make a recommendation for regulation for any week following 10 weeks of regulations during any fiscal period. The requirements of paragraph (c) of this section and this paragraph (d) shall not apply to recommendations to amend an existing regulation.

(e) The vote of each member cast for or against any recommendation made pursuant to this subpart shall be duly recorded. Each member must vote in person.

(f) In the event any member of the committee and his alternate are not present at any meeting of the committee, any alternate present who is not acting for any other member may be designated by the chairman of the committee to serve in the place and stead of the absent member.

(g) The committee shall give to the Secretary the same notice of meetings of the committee as is given to the members thereof.

[34 FR 12428, July 30, 1969]

§ 913.26 Funds.

(a) All funds received by the committee pursuant to the provisions of this subpart shall be used solely for the purposes herein specified and shall be accounted for in the manner provided in this subpart.

(b) The Secretary may, at any time, require the committee and its members to account for all receipts and disbursements.

(c) Upon the removal or expiration of the term of office of any member of the committee such member shall account for all receipts and disbursements and deliver all property and funds, together with all books and records in his possession, to his successor in office, and shall execute such assignment and other instruments as may be necessary or appropriate to vest in such successor full title to all of

the property, funds and claims vested in such member pursuant to this subpart.

Expenses and Assessments

§ 913.30 Expenses.

The committee is authorized to incur such expenses as the Secretary may find are reasonable and are likely to be incurred to carry out the functions of the committee under this subpart during each fiscal period. The funds to cover such expenses shall be acquired by the levying of assessments upon handlers as provided in § 913.31.

§ 913.31 Assessments.

(a) Each handler who first handles fruit shall pay to the committee, upon demand, such handler's pro rata share of the expenses which the Secretary finds are reasonable and likely to be incurred by such committee for its maintenance and functioning during each fiscal period. Each such handler's share of such expenses shall be that proportion thereof which the total quantity of fruit shipped to destinations outside the regulation area but within the 48 contiguous States of the United States (including the District of Columbia), Canada, or Mexico by such handler as the first handler thereof during the applicable fiscal period is of the total quantity of fruit so shipped by all handlers during the same fiscal period: *Provided,* That if the computation of the prorate bases of handlers includes all fruit handled as specified pursuant to § 913.43(e), each handler's pro rata share shall be the proportion his or her total shipments bear to the total shipments of all handlers. The Secretary shall fix the rate of assessment per standard packed carton of fruit to be paid by each such handler. The payment of assessments for the maintenance and functioning of the committee may be required under this part throughout the period it is in effect irrespective of whether particular provisions thereof are suspended or become inoperative.

(b) At any time during or after the fiscal period, the Secretary may increase the rate of assessment so that the sum of money collected pursuant to the provisions of this section shall be adequate to cover the said expenses. Such increase shall be applicable to all fruit shipped to the applicable destinations during the given fiscal period. In order to provide funds to carry out the functions of the committee, handlers may make advance payment of assessments.

[44 FR 8865, Feb. 12, 1979]

§ 913.32 Handler's accounts.

If, at the end of a fiscal period the assessments collected are in excess of expenses incurred, the committee, with the approval of the Secretary, may carry over such excess into subsequent fiscal periods as a reserve: *Provided,* That funds already in the reserve do not exceed approximately one-half one fiscal period's expenses. Such reserve funds may be used (a) to cover any expenses authorized by this part and (b) to cover necessary expenses of liquidation in the event of termination of this part. If any such excess is not retained in a reserve, each handler entitled to a proportionate refund shall be credited with such refund against the operations of the following fiscal period unless he demands payment of the sum due him, in which case such sum shall be paid to him. Upon termination of this part, any funds not required to defray the necessary expenses of liquidation shall be disposed of in such manner as the Secretary may determine to be appropriate: *Provided,* That to the extent practical, such funds shall be returned pro rata to the persons from whom such funds were collected.

Regulation

§ 913.40 Marketing policy.

(a) Prior to the first recommendation for regulation during any marketing season, the committee shall submit to the Secretary its marketing policy for such season. Such marketing policy shall contain the following information:

(1) The estimated available crop of grapefruit in the district, including estimated quality;

(2) The estimated utilization of the crop that will be marketed in domestic, export, and by-product channels,

together with quantities otherwise to be disposed of;

(3) A schedule of estimated weekly shipments of grapefruit during the ensuing season;

(4) The available supplies of competitive deciduous fruits in all producing areas of the United States;

(5) Level and trend in consumer income;

(6) Estimated supplies of competitive citrus commodities; and

(7) Any other pertinent factors bearing on the marketing of grapefruit. In the event that it becomes advisable substantially to modify such marketing policy, the committee shall submit to the Secretary a revised marketing policy.

(b) All meetings of the committee held for the purpose of formulating such marketing policies shall be open to growers and handlers.

(c) The committee shall transmit a copy of each marketing policy report or revision thereof to the Secretary and to each grower and handler who files a request therefor. Copies of all such reports shall be maintained in the office of the committee where they shall be available for examination by growers and handlers.

§ 913.41 Recommendation for volume regulation.

(a) The committee may, during any week, recommend to the Secretary the total quantity of grapefruit which it deems advisable to be handled to destinations outside the regulation area but within the 48 contiguous States of the United States (including the District of Columbia), Canada, or Mexico during the next succeeding week: *Provided,* That volume regulations shall not be recommended after such regulations have been effective for an aggregate of 14 weeks during any fiscal period.

(b) In making its recommendation, the committee shall give due consideration to the following factors:

(1) Market prices for grapefruit;

(2) Supply, maturity, and conditions of grapefruit in the production area;

(3) Market prices and supplies of citrus fruits from competitive producing areas, and supplies of other competitive fruits;

(4) Trend and level in consumer income; and

(5) Other relevant factors.

(c) At any time during a week for which the Secretary, pursuant to § 913.42, has fixed the quantity of grapefruit which may be so handled, the committee may recommend to the Secretary that such quantity be increased for such week. Each such recommendation, together with the committee's reason for such recommendation, shall be submitted promptly to the Secretary.

[44 FR 8865, Feb. 12, 1979]

§ 913.42 Issuance of volume regulation.

Whenever the Secretary finds, from information submitted by the committee, or from other available information, that to limit the quantity of grapefruit which may be handled to destinations outside the regulation area but within the 48 contiguous States of the United States (including the District of Columbia), Canada, or Mexico during a specified week will tend to effectuate the declared policy of the act, he shall fix such quantity: *Provided,* That such regulations during each fiscal period shall not in the aggregate limit the volume of grapefruit shipments for more than 14 weeks. The quantity so fixed for any week may be increased by the Secretary at any time during such week. Such regulations may, as authorized by the act, be made effective irrespective of whether the season average price of grapefruit is in excess of the parity price of grapefruit specified therefor in the act. The Secretary may upon the recommendation of the committee, or upon other available information, terminate or suspend any regulation at any time.

[44 FR 8865, Feb. 12, 1979]

§ 913.43 Prorate bases.

(a) Each person who desires to handle grapefruit shall submit to the committee, at such time and in such manner as may be designated by the committee, and upon forms made available by it, a written application for a prorate base and for allotments

as provided in this section and § 913.44.

(b) Such application shall be substantiated in such manner and shall be supported by such information as the committee may require.

(c) The committee shall determine the accuracy of the information submitted pursuant to this section. Whenever the committee finds that there is an error, omission, or inaccuracy in any such information, it shall correct the same and shall give the person who submitted the information a reasonable opportunity to discuss with the committee the factors considered in making the correction.

(d) Each week during the marketing season when volume regulation is likely to be recommended for the following week, the committee shall compute a prorate base for each handler who has made application in accordance with the provisions of this section. The prorate base for each such handler shall be computed by adding together the handler's shipments of grapefruit to destinations outside the regulation area in the 48 contiguous States of the United States (including the District of Columbia), Canada, or Mexico in the current season and his shipments to such destinations in the immediately preceding seasons, if any, within the representative period, in which he shipped grapefruit and dividing such total by a divisor computed by adding together the number of weeks elapsed in the current season and 51 weeks for each of such immediately preceding seasons within the representative period in which the handler so shipped grapefruit. For purposes of this section "representative period" means the three preceding seasons together with the current season; the term "season" means the 51 week period beginning with the first full week in August of any year; and the term "current season" means the period beginning with the first full week in August of the current fiscal period through the fourth full week preceding the week of regulation: *Provided,* That when official shipping records are available to the committee the term "current season" shall extend through the third full week preceding the week of regulation.

(e) If the committee determines that it is desirable and appropriate to include in the computation of prorate bases of handlers all grapefruit handled during the representative period by each handler applicant, it may, upon the approval of the Secretary, include all such fruit in such computation.

[44 FR 8865, Feb. 12, 1979]

§ 913.44 Allotments.

Whenever the Secretary has fixed the quantity of grapefruit which may be handled during any week, the committee shall calculate the quantity of grapefruit which may be handled during such week by each person who has applied for a prorate base. Such quantity shall be the allotment of such person and shall be that portion of the total quantity fixed by the Secretary which, expressed in terms of percent, is equal to the percentage that such applicant's prorate base is of the aggregate of the prorate bases of all such applicants. The committee shall give reasonable notice to each person of the allotment computed for him pursuant to this section.

§ 913.45 Overshipment.

During any week for which the Secretary has fixed the total quantity of grapefruit which may be handled, any person who has received an allotment may handle, in addition to the total allotment available to him, an amount of grapefruit equivalent to 10 percent of such total allotment or 1,000 cartons, whichever is greater: *Provided,* That the Secretary, on the basis of a recommendation of the committee or other available information, may set such amount at any figure not less than 1,000 cartons and not more than 2,000 cartons. Handlers may overship (a) during such week the entire 1,000 cartons or other amount not in excess of 2,000 cartons as may be set by the Secretary, or (b) during two or more consecutive weekly periods when regulations are in effect, any portion of such 1,000 cartons or other amount set by the Secretary until the accumulated overshipments reach the applicable maximum number of boxes permitted to be overshipped. The quantity of

grapefruit so overshipped when regulations are in effect shall be deducted from such person's allotment for the week following the one in which the total permitted overshipment is reached or for the week in which such person makes no shipments of grapefruit. If such person's allotment for such week is an amount less than the excess shipments permitted under this section, the remaining quantity shall be deducted from succeeding weekly allotments issued to such person until such excess has been entirely offset: *Provided,* That any time there is no volume regulation in effect it shall be deemed to cancel all requirements to undership allotments because of previous overshipments pursuant to this part.

[34 FR 12429, July 30, 1969, as amended at 44 FR 8866, Feb. 12, 1979]

§ 913.46 Undershipments.

If any person handles during any week a quantity of grapefruit, covered by a regulation issued pursuant to § 913.42, in an amount less than the total allotment available to him for such week, he may handle, during the next succeeding week, a quantity of grapefruit, in addition to that permitted by the allotment available to him for such week, equivalent to such undershipment or 25 percent of the allotment issued to him for the week during which the undershipment was made, whichever is the lesser: *Provided,* That the committee, with the approval of the Secretary, may increase or decrease such percentage.

§ 913.47 Allotment loans or transfers.

(a) A person to whom allotments have been issued may lend or transfer all or part of such allotment to another such person.

(1) In connection with a loan of allotment, each party to any such loan agreement shall, prior to completion of the agreement, notify the committee of the proposed loan and the date of repayment, and obtain the committee's approval of the agreement.

(2) In connection with a transfer of allotment, each party shall promptly notify the committee so that proper adjustment of records can be made.

(b) The committee may act on behalf of persons desiring to arrange allotment loans or participate in the transfer of allotment. In each case the committee shall confirm all such transactions immediately after the completion thereof by memorandum addressed to the parties concerned, which memorandum shall be deemed to satisfy the requirements of paragraph (a) of this section as to notifying the committee and obtaining committee approval.

[34 FR 12429, July 30, 1969]

§ 913.48 Inspection and certification.

Whenever the handling of grapefruit is regulated pursuant to § 913.42, each handler who handles any grapefruit shall, prior to the handling of any lot of grapefruit, cause such lot to be inspected by the Federal or Federal-State Inspection Service and certified by it as meeting all applicable requirements of such regulation: *Provided,* That such inspection and certification shall not be required if the particular lot of fruit previously had been so inspected and certified.

Reports and Records

§ 913.50 Reports and records.

Upon request of the committee, made with approval of the Secretary, each handler shall furnish to the committee, in such manner and at such time as it may prescribe, reports of overshipments and undershipments and such other reports and information as may be necessary for the committee to perform its duties under this part. Each handler shall maintain for such period of time as the committee shall prescribe, with the approval of the Secretary, such records of grapefruit handled as may be necessary to verify reports submitted pursuant to this section.

Miscellaneous Provisions

§ 913.55 Fruit not subject to regulation.

Except as otherwise provided in this section, any person may, without regard to the provisions of §§ 913.42 through 913.48 and the regulations

issued thereunder, ship grapefruit for the following purposes:

(a) To a charitable institution for consumption by such institution;

(b) To a relief agency for distribution by such agency;

(c) To a commercial processor for conversion by such processor into canned or frozen products or into a beverage base;

(d) By parcel post; and

(e) In such minimum quantities, types of shipments, or for such purposes as the committee with the approval of the Secretary may specify. No assessment shall be levied on fruit so shipped. The committee shall, with the approval of the Secretary, prescribe such rules, regulations, or safeguards as it may deem necessary to prevent grapefruit handled under the provisions of this section from entering channels of trade for other than the purposes authorized by this section. Such rules, regulations, and safeguards may include the requirements that handlers shall file applications with the committee for authorization to handle grapefruit pursuant to this section, and that such applications be accompanied by a certification by the intended purchaser or receiver that the grapefruit will not be used for any purpose not authorized by this section.

§ 913.56 Compliance.

Except as provided in this part, no person shall handle grapefruit during any week in which a regulation issued by the Secretary pursuant to § 913.42 is in effect, unless such grapefruit are, or have been, handled pursuant to an allotment therefor, or unless such person is otherwise permitted to handle such grapefruit under the provisions of this part; and no person shall handle grapefruit except in conformity with the provisions of this part and the regulations issued under this part.

§ 913.57 Right of Secretary.

The members of the committee (including successors and alternates), and any agents, employees, or representatives thereof, shall be subject to removal or suspension by the Secretary at any time. Each and every regulation, decision, determination, or other act of the committee shall be subject to the continuing right of the Secretary to disapprove of the same at any time. Upon such disapproval, the disapproved action of the committee shall be deemed null and void, except as to acts done in reliance thereon or in compliance therewith prior to such disapproval by the Secretary.

§ 913.58 Effective time.

The provisions of this part shall become effective at such time as the Secretary may declare above his signature to this part, and shall continue in force until terminated in one of the ways specified in § 913.59.

§ 913.59 Termination.

(a) The Secretary may at any time terminate the provisions of this part by giving at least one day's notice by means of a press release or in any other manner which he may determine.

(b) The Secretary shall terminate the provisions of this part at the end of any fiscal period whenever he finds that such termination is favored by a majority of producers who, during the preceding fiscal period, have been engaged in the production for market of fruit: *Provided*, That such majority have, during such period, produced for market more than 50 percent of the volume of such fruit produced for market, but such termination shall be effective only if announced on or before July 31 of the then current fiscal period.

(c) The provisions of this part shall, in any event, terminate whenever the provisions of the act authorizing it cease to be in effect.

§ 913.60 Proceedings after termination.

(a) Upon the termination of the provisions of this part, the then functioning members of the committee shall continue as joint trustees, for the purpose of liquidating the affairs of the same committee, of all the funds and property then in the possession of or under control of such administrative committee, including claims for any funds unpaid or property not delivered at the time of such termination.

(b) The said trustees (1) shall continue in such capacity until discharged by the Secretary; (2) shall, from time to time, account for all receipts and disbursements or deliver all property on hand, together with all books and records of the committee and of the joint trustees, to such person as the Secretary may direct; and (3) shall, upon the request of the Secretary, execute such assignments or other instruments necessary or appropriate to vest in such person full title and right to all of the funds, property, and claims vested in the committee, or the joint trustees pursuant to this part.

(c) Any funds collected pursuant to § 913.31, over and above the amounts necessary to meet outstanding obligations and expenses necessarily incurred during the operation of this part and during the liquidation period, shall be returned to handlers to the extent practicable after the termination of this part. The refund to each handler shall be represented by the excess of the amount paid by him over and above his pro rata share of the expenses.

(d) Any person to whom funds, or claims have been transferred or delivered by the committee, or its members, pursuant to this section, shall be subject to the same obligations imposed upon the members of said committee and upon the said joint trustees.

§ 913.61 Duration of immunities.

The benefits, privileges, and immunities conferred upon any person by virtue of this part shall cease upon its termination, except with respect to acts done under and during the existence of this part.

§ 913.62 Agents.

The Secretary may, by designation in writing, name any person, including any officer or employee of the Government, or name any agency or division in the United States Department of Agriculture, to act as his agent or representative in connection with any of the provisions of this part.

§ 913.63 Derogation.

Nothing contained in this part is, or shall be construed to be in derogation or in modification of the rights of the Secretary or of the United States (a) to exercise any powers granted by the act or otherwise, or (b) in accordance with such powers, to act in the premises whenever such action is deemed advisable.

§ 913.64 Personal liability.

No member or alternate of the committee, nor any employee or agent thereof, shall be held personally responsible, either individually or jointly with others, in any way whatsoever, to any handler or to any other person for errors in judgment, mistakes, or other acts, either of commission or omission, as such member, alternate, agent, or employee.

§ 913.65 Separability.

If any provision of this part is declared invalid, or the applicability thereof to any person, circumstance, or thing is held invalid, the validity of the remainder of this part of the applicability thereof to any other person, circumstance, or thing shall not be affected thereby.

Subpart—Rules and Regulations

§ 913.120 Nomination procedure.

Meetings shall be called by the committee in accordance with the provisions of § 913.17, for the purpose of making nominations for members and alternate members of the Interior Grapefruit Marketing Committee. The manner of nominating members and alternate members of said committee shall be as follows:

(a) At each such meeting the committee's representative shall announce the requirements as to eligibility for voting for nominees and the procedure for voting, and shall explain the duties of the committee.

(b) A Chairman and a Secretary of each meeting shall be selected.

(c) At each meeting there shall be presented for nomination and there shall be nominated not less than the number of nominees required under the provisions of § 913.15, all of whom shall have the qualifications as specified in § 913.17.

(d) At the meetings of handlers, any person authorized to represent a handler may cast a ballot for such handler.

(e) At each meeting each eligible person may cast one vote for each of the persons to be nominated to represent the district or group, as the case may be.

(f) Voting may be by written ballot. If written ballots are used all ballots shall be delivered by the Chairman or the Secretary of the meeting to the agent of the Secretary. If ballots are not used, the committee's representative shall deliver to the Secretary's agent a listing of each person nominated and a count of the number of votes cast for each nominee for grower member and alternate. Said representative shall also provide the agent the register of eligible voters present at each meeting, a listing of each person nominated, the number of votes cast, and the weight by volume of shipments voted for each nominee for shipper member and alternate.

[44 FR 25409, May 1, 1979]

REPORTING CERTAIN GRAPEFRUIT SHIPMENTS

§ 913.150 Reporting certain grapefruit shipments.

Whenever a handler ships grapefruit from the Interior District which was not grown in that district, he shall make a notation on the copy of the manifest of such shipment which he furnishes to the Federal-State Inspection Service clearly indicating that the grapefruit contained in the shipment was not grown in the Interior District.

[31 FR 2953, Feb. 2, 1966]

§ 913.151 Reporting shipments outside the regulation area.

Prior to shipment of each lot of grapefruit, the handler shall provide the Interior Grapefruit Marketing Committee, or its designated agent, a copy of the shipping manifest applicable to such lot. Such manifest shall indicate whether such fruit is to be transported to a point or points outside the regulation area or within the regulation area, and shall be certified by the handler to the committee as to the correctness of such information shown thereon.

[35 FR 14256, Sept. 10, 1970]

§ 913.160 Public member eligibility requirements and nomination procedure.

(a) The public member shall be neither a producer nor a handler of grapefruit produced in the regulation area and shall have no financial interest in the production or marketing of grapefruit.

(b) The public member should be able to devote sufficient time and express a willingness to attend committee activities regularly and become familiar with the background and economics of the industry.

(c) The public member must be a resident of the regulation area.

(d) The public member should be nominated by the Interior Grapefruit Marketing Committee and should serve a one-year term which coincides with the term of office of producer and handler members of the committee.

[45 FR 40565, June 16, 1980]

NOTE: After January 1, 1979, "Budget of Expenses and Rate of Assessment" regulations (e.g. sections .200 through .299) and "Handling" regulations (e.g. sections .300 through .399) which are in effect for a year or less, will be carried in the Code of Federal Regulations. For FEDERAL REGISTER citations affecting these regulations, see the "List of CFR Sections Affected" in this volume.

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915.305 Florida Avocado Container Regulation 5.
915.306 Florida avocado grade, pack, and container marking regulation.

AUTHORITY: Secs. 1-19, 48 Stat. 31, as amended; 7 U.S.C. 601-674.

SOURCE: 19 FR 3439, June 11, 1954, unless otherwise noted. Redesignated at 26 FR 12751, Dec. 30, 1961.

Subpart—Order Regulating Handling

DEFINITIONS

§ 915.1 Secretary.

"Secretary" means the Secretary of Agriculture of the United States or any officer or employee of the United States Department of Agriculture who is, or may hereafter be, authorized to exercise the powers and perform the duties of the Secretary of Agriculture of the United States.

§ 915.2 Act.

"Act" means Public Act No. 10, 73d Congress (May 12, 1933), as amended and as reenacted and amended by the Agricultural Marketing Agreement Act of 1937, as amended (48 Stat. 31, as amended, 68 Stat. 906, 1047; 7 U.S.C. 601 et seq.).

[19 FR 3439, June 11, 1954, as amended at 20 FR 4177, June 15, 1955. Redesignated at 26 FR 12751, Dec. 30, 1961]

§ 915.3 Person.

"Person" means an individual, partnership, corporation, association or any other business unit.

§ 915.4 Production area.

"Production area" means the counties of Brevard, Orange, Lake, Polk, Hillsborough, and Pinellas in the State of Florida, and all of the counties of that State situated south of such counties.

[20 FR 4177, June 15, 1955. Redesignated at 26 FR 12751, Dec. 30, 1961]

§ 915.5 Avocados.

"Avocados" means all varieties of avocados grown in the production area.

§ 915.6 Fiscal year.

"Fiscal year" means the twelve-month period ending March 31 of each year.

§ 915.7 Committee.

"Committee" means the Avocado Administrative Committee established pursuant to § 915.20.

§ 915.8 Grower.

"Grower" is synonymous with producer and means any person who produces avocados for market and who has a proprietary interest therein: *Provided,* That as used in § 915.22 the term grower shall include only those who have a proprietary interest in the production of 10 or more bearing avocado trees.

[19 FR 3439, June 11, 1954, as amended at 22 FR 3513, May 21, 1957. Redesignated at 26 FR 12751, Dec. 30, 1961]

§ 915.9 Handler.

"Handler" is synonymous with shipper and means any person (except a common or contract carrier transporting avocados owned by another person) who handles avocados or causes avocados to be handled.

§ 915.10 Handle.

"Handle" means to sell, consign, deliver, or transport avocados within the production area or between the production area and any point outside thereof: *Provided,* That such term shall not include: (a) The sale or delivery of avocados to a handler, registered as such with the committee in accordance with such rules and regulations as it may prescribe with the approval of the Secretary, who has facilities within the production area for preparing avocados for market; (b) the delivery of avocados to such a handler solely for the purpose of having such avocados prepared for market; or (c) the transportation of avocados by a handler, so registered with the committee, from the grove to his packing facilities within the production area for the purpose of having such avocados prepared for market. In the event a grower sells his avocados to a handler who is not so registered with the committee, such grower shall be the first handler of such avocados.

[19 FR 3439, June 11, 1954, as amended at 20 FR 4177, June 15, 1955. Redesignated at 26 FR 12751, Dec. 30, 1961]

§ 915.11 District.

"District" means the applicable one of the following described subdivisions of the production area:

(a) "District 1" shall include Dade County.

(b) "District 2" shall include all of the production area except Dade County.

§ 915.12 Export.

"Export" means to ship avocados to any destination which is not within the 48 contiguous States of the District of Columbia of the United States or Canada.

[43 FR 39322, Sept. 5, 1978]

ADMINISTRATIVE BODY

§ 915.20 Establishment and membership.

(a) There is hereby established an Avocado Administrative Committee consisting of nine members, each of whom shall have an alternate who shall have the same qualifications as the member for whom he is an alternate. Five of the members and their respective alternates shall be growers who shall not be handlers of avocados produced by others or employees of such handlers. Four of the members and their respective alternates shall be handlers or employees of handlers. The five members of the committee who shall be growers who shall not be handlers of avocados produced by others or employees of such handlers are referred to as "grower" members of the committee; and the four members who shall be handlers or employees of handlers are referred to as "handler" members of the committee. Four of the five grower members shall be producers of avocados in District 1, and one grower member shall be a producer of avocados in District 2. Three of the four handler members shall be handlers, or employees of handlers, of avocados in District 1, and one handler member shall be a handler, or an em-

ployee of a handler, of avocados in District 2.

(b) The committee may be increased by one public member and an alternate. Persons for the public member positions would be nominated by the committee and selected by the Secretary. The committee, with the approval of the Secretary, shall prescribe qualifications, term of office and the procedure for nominating the public member and alternate.

[19 FR 3439, June 11, 1954. Redesignated at 26 FR 12751, Dec. 30, 1961, and amended at 30 FR 917, Jan. 29, 1965; 43 FR 39322, Sept. 5, 1978]

§ 915.21 Term of office.

The term of office of each member and alternate member of the committee shall begin April 1, and shall terminate March 31 of the following year. Members and alternate members shall serve in such capacities for the portion of the term of office for which they are selected and qualify and until their respective successors are selected and have qualified. The consecutive terms of office of members shall be limited to three terms.

§ 915.22 Nomination.

(a) *Initial members.* Nominations for each of the five initial grower members and four initial handler members of the committee, together with nominations for the initial alternate members for each position, may be submitted to the Secretary by individual growers and handlers. Such nominations may be made by means of group meetings of the growers and handlers concerned in each district. Such nominations, if made, shall be filed with the Secretary no later than ten calendar days prior to the effective date hereof. In the event nominations for initial members and alternate members of the committee; or the filed pursuant to, and within the time specified in, this section, the Secretary may select such initial members and alternate members without regard to nominations, but selections shall be on the basis of the representation provided for in § 915.20.

(b) *Successor members.* (1) The committee shall hold or cause to be held a meeting or meetings of growers and handlers in each district to designate nominees for successor members and alternate members of the committee; or the committee may conduct nominations by mail in District 2 in a manner recommended by the committee and approved by the Secretary. Such nominations shall be submitted to the Secretary by the committee not later than February 15 of each year. The committee shall prescribe procedural rules, not inconsistent with the provisions of this section, for the conduct of nomination.

(2) Only growers may participate in the nomination and election of nominees for grower members and their alternates. Each grower shall be entitled to cast only one vote for each nominee to be elected in the district in which he produced avocados. No grower shall participate in the election of nominees in more than one district in any one fiscal year.

(3) Only handlers may participate in the nomination and election of nominees for handler members and their alternates. Each handler shall be entitled to cast only one vote for each nominee to be elected in the district in which he handles avocados, which vote shall be weighted by the volume of avocados shipped by such handler during the immediately preceding twelve month period January through December. No handler shall participate in the election of nominees in more than one district in any one fiscal year.

[19 FR 3439, June 11, 1954, as amended at 22 FR 3513, May 21, 1957. Redesignated at 26 FR 12751, Dec. 30, 1961, and amended at 40 FR 52605, Nov. 11, 1975; 40 FR 59719, Dec. 30, 1975]

§ 915.23 Selection.

From the nominations made pursuant to § 915.22, or from other qualified persons, the Secretary shall select the five grower members of the committee, the four handler members of the committee, and an alternate for each such member.

§ 915.24 Failure to nominate.

If nominations are not made within the time and in the manner prescribed

in § 915.22, the Secretary may, without regard to nominations, select the members and alternate members of the committee on the basis of the representation provided for in § 915.20.

§ 915.25 Acceptance.

Any person selected by the Secretary as a member or as an alternate member of the committee shall qualify by filing a written acceptance with the Secretary within ten days after being notified of such selection.

§ 915.26 Vacancies.

To fill any vacancy occasioned by the failure of any person selected as a member or as an alternate member of the committee to qualify, or in the event of the death, removal, resignation, or disqualification of any member or alternate member of the committee, a successor for the unexpired term of such member or alternate member of the committee shall be nominated and selected in the manner specified in §§ 915.22 and 915.23. If the names of nominees to fill any such vacancy are not made available to the Secretary within fifteen days after such vacancy occurs, the Secretary may fill such vacancy without regard to nominations, which selection shall be made on the basis of representation provided for in § 915.20.

§ 915.27 Alternate members.

An alternate member of the committee, during the absence or at the request of the member for whom he is an alternate, shall act in the place and stead of such member. In the event of the death, removal, resignation, or disqualification of a member, his alternate shall act for him until a successor for such member is selected and has qualified. In the event both a member and his alternate are unable to attend a committee meeting, the chairman may designate any alternate who is present and who is not serving for any member to serve in such absent member's place and stead: *Provided*, That only grower alternate members may be so designated to serve for grower members and only handler alternate members may be so designated to serve only for handler members.

[19 FR 3439, June 11, 1954. Redesignated at 26 FR 12751, Dec. 30, 1961, and amended at 35 FR 16627, Oct. 27, 1970]

§ 915.28 Powers.

The committee shall have the following powers:

(a) To administer the provisions of this part in accordance with its terms;

(b) To receive, investigate, and report to the Secretary complaints of violations of the provisions of this part;

(c) To make and adopt rules and regulations to effectuate the terms and provisions of this part; and

(d) To recommend to the Secretary amendments to this part.

§ 915.29 Duties.

The committee shall have, among others, the following duties:

(a) To select a chairman and such other officers as may be necessary, and to define the duties of such officers;

(b) To appoint such employees, agents, and representatives as it may deem necessary, and to determine the compensation and to define the duties of each;

(c) To submit to the Secretary as soon as practicable after the beginning of each fiscal year a budget for such fiscal year, including a report in explanation of the items appearing therein and a recommendation as to the rate of assessment for such fiscal year;

(d) To keep minutes, books, and records which will reflect all of the acts and transactions of the committee and which shall be subject to examination by the Secretary;

(e) To prepare periodic statements of the financial operations of the committee and to make copies of each such statement available to growers and handlers for examination at the office of the committee;

(f) To cause its books to be audited by a certified public accountant at least once each fiscal year, and at such other times as the Secretary may request;

(g) To act as intermediary between the Secretary and any grower or handler;

(h) To investigate growing and maturity conditions of avocados, and to

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assemble data in connection therewith;

(i) To engage in such research relating to the determination of maturity and grade standards for avocados as may be approved by the Secretary;

(j) To submit to the Secretary such available information as he may request;

(k) To notify, as provided in this part, producers and handlers of all meetings of the committee to consider recommendations for regulation;

(l) To give the Secretary the same notice of meetings of the committee as is given to its members;

(m) To consult with such representatives of growers or groups of growers as may be deemed necessary and to pay the travel expenses incurred by such representatives in attending committee meetings at the request of the committee: *Provided,* That the committee shall not pay the travel expenses of more than three such representatives in connection with any one meeting of the committee; and

(n) To investigate compliance with the provisions of this part.

§ 915.30 Procedure.

(a) Except as provided in paragraph (c) of this section, six members of the committee, including alternates acting for members, shall constitute a quorum and any decision, recommendation or other action of the committee shall require not less than five concurring votes including one by a handler, or an alternate acting as such: *Provided,* That if the committee is increased by one, the quorum requirement shall be increased to seven and any decision, recommendation or other action of the committee shall require not less than six concurring votes including one by a handler, or an alternate acting as such.

(b) The committee may provide for simultaneous meetings of groups of its members assembled at two or more designated places: *Provided,* That such meetings shall be subject to the establishment of telephone communication between all such groups and the availability of loud speaker receivers for each group so that each member may participate in the discussions and other actions the same as if the committee were assembled in one place.

(c) For any recommendation of the committee for an assessment rate exceeding $0.20 per bushel to be applied pursuant to § 915.41, the quorum requirement shall be eight members or alternates acting for members and eight concurring votes shall be required.

[19 FR 3439, June 11, 1954, as amended at 22 FR 3513, May 21, 1957. Redesignated at 26 FR 12751, Dec. 30, 1961, and amended at 43 FR 39322, Sept. 5, 1978]

§ 915.31 Expenses.

The members of the commmittee and their respective alternates when performing duties at the direction of the committee, shall be reimbursed for expenses necessarily incurred by them in the performance of their duties under this part.

[43 FR 39323, Sept. 5, 1978]

§ 915.32 Annual report.

The committee shall, as soon as practicable after the close of each fiscal year, prepare and mail an annual report to the Secretary, and to each handler and grower who requests a copy of the report. This annual report shall contain at least: (a) A complete review, by districts, of the regulatory operations during the fiscal year; (b) an appraisal of the effect of such regulatory operations upon the avocado industry; and (c) any recommendations for changes in the program.

[19 FR 3439, June 11, 1954, as amended at 22 FR 3513, May 21, 1957. Redesignated at 26 FR 12751, Dec. 30, 1961]

Expenses and Assessments

§ 915.40 Expenses.

The committee is authorized to incur such expenses as the Secretary finds are reasonable and likely to be incurred to enable the committee to exercise its powers and perform its duties in accordance with the provisions of this part during each fiscal year. The funds to cover such expenses shall be acquired by the levying of assessments as provided for in § 915.41.

[19 FR 3439, June 11, 1954. Redesignated at 26 FR 12751, Dec. 30, 1961, and amended at 35 FR 16627, Oct. 27, 1970]

§ 915.41 Assessments.

(a) Each person who first handles avocados shall, with respect to the avocados so handled by him, pay to the committee upon demand such person's pro rata share of the expenses which the Secretary finds are reasonable and likely to be incurred by the committee during each fiscal year. Each such person's share of such expenses shall be equal to the ratio between the total quantity of avocados handled by him as the first handler thereof during the applicable fiscal year, and the total quantity of avocados so handled by all persons during the same fiscal year. The payment of assessments for the maintenance and functioning of the committee may be required under this part throughout the period it is in effect irrespective of whether particular provisions thereof are suspended or become inoperative. If a handler does not pay his assessment within the time prescribed by the committee, the unpaid assessment may be subject to an interest charge at rates prescribed by the committee with the approval of the Secretary.

(b) The Secretary shall fix the rate of assessment per 55-pounds of fruit or equivalent in any container or in bulk, to be paid by each such handler. At any time during or after a fiscal year, the Secretary may increase the rate of assessment, in order to secure sufficient funds to cover any later finding by the Secretary relative to the expense which may be incurred. Such increase shall be applied to all fruit handled during the applicable fiscal year. In order to provide funds for the administration of the provisions of this part, the committee may accept the payment of assessments in advance.

[19 FR 3439, June 11, 1954. Redesignated at 26 FR 12751, Dec. 30, 1961, and amended at 35 FR 16627, Oct. 27, 1970; 40 FR 52605, Nov. 11, 1975; 43 FR 39323, Sept. 5, 1978]

§ 915.42 Accounting.

(a) If, at the end of a fiscal year, the assessments collected are in excess of expenses incurred, such excess shall be accounted for as follows:

(1) Except as provided in paragraph (a)(2) of this section, each person entitled to a proportionate refund of the excess assessment shall be credited with such refund against the operation of the following fiscal year unless such person demands repayment thereof, in which event it shall be paid to him: *Provided,* That any sum paid by a person in excess of his pro rata share of the expenses during any fiscal year may be applied by the committee at the end of such fiscal year to any outstanding obligations due the committee from such person.

(2) The Secretary, upon recommendation of the committee, may determine that it is appropriate for the maintenance and functioning of the committee that the funds remaining at the end of a fiscal year which are in excess of the expenses necessary for committee operations during such year may be carried over into following years as a reserve. Such reserve may be established at an amount not to exceed approximately 3 fiscal years' operational expenses. Funds in the reserve may be used to cover the necessary expenses of liquidation, in the event of termination of this part, and to cover the expenses incurred for the maintenance and functioning of the committee during any fiscal year when there is crop failure, or during any period of suspension of any or all of the provisions of this part. Such reserve may also be used by the committee to finance its operations during any fiscal year prior to the time that assessment income is sufficient to cover such expenses and to cover deficits incurred during any fiscal year when income is less than expenses. Upon termination of this part, any funds not required to defray the necessary expenses of liquidation shall be disposed of in such manner as the Secretary may determine to be appropriate: *Provided,* That to the extent practical, such funds shall be returned pro rata to the persons from whom such funds were collected.

(b) All funds received by the committee pursuant to the provisions of this part shall be used solely for the purposes specified in this part, and shall be accounted for in the manner provided in this part. The Secretary

may, at any time, require the committee and its members to account for all receipts and disbursements.

[19 FR 3439, June 11, 1954, as amended at 22 FR 3513, May 21, 1957. Redesignated at 26 FR 12751, Dec. 30, 1961, and amended at 35 FR 16628, Oct. 27, 1970; 43 FR 39323, Sept. 5, 1978]

RESEARCH AND DEVELOPMENT

§ 915.45 Production research, marketing research and development.

The committee may, with the approval of the Secretary, establish or provide for the establishment of production research, marketing research and development projects designed to assist, improve, or promote the marketing, distribution, and consumption or efficient production of avocados. Such projects may provide for any form of marketing promotion, including paid advertising. The expenses of such projects shall be paid from funds collected pursuant to the applicable provisions of § 915.41.

[40 FR 52605, Nov. 11, 1975]

§ 915.49 Marketing policy.

Each season prior to making any recommendations pursuant to § 915.50, the committee shall submit to the Secretary a report setting forth its marketing policy for the ensuing season. Such marketing policy report shall contain information relative to (a) the estimated total production of avocados within the production area; (b) the expected general quality and maturity of avocados in the production area and in competing areas; (c) the expected demand conditions for avocados in different market outlets; (d) the expected shipments of avocados produced in the production area and competing areas; (e) supplies of competing commodities; (f) trend and level of consumer income; (g) other factors having a bearing on the marketing of avocados; and (h) the type of regulations expected to be recommended during the season. In the event it becomes advisable, because of changes in the supply and demand situation for avocados, to modify substantially such marketing policy, the committee shall submit to the Secretary a revised marketing policy report setting forth the information prescribed in this section. The committee shall publicly announce the contents of each marketing policy report and copies thereof shall be maintained in the offices of the committee where they shall be available for examination by growers and handlers.

[40 FR 52605, Nov. 11, 1975]

REGULATIONS

§ 915.50 Recommendations for regulation.

(a) Whenever the committee deems it advisable to regulate the handling of any variety or varieties of avocados grown in District 1 or District 2 in the manner provided in § 915.51, it shall so recommend to the Secretary.

(b) In arriving at its recommendations pursuant to paragraph (a) of this section, the committee shall give consideration to such of the following factors as may be applicable: (1) The estimated total production and shipments of each variety of avocados, including avocados grown in other areas; (2) the time of bloom and growing conditions during the development of the crop; (3) the quality of the avocado crop; (4) the anticipated demand for avocados; and (5) other available information having a bearing on the market for avocados with each recommendation for regulation the committee shall submit to the Secretary the data and information on which such recommendation is predicated, and such other available information as the Secretary may request.

(c) All meetings of the committee held for the purpose of formulating recommendations for regulations shall be open to growers and handlers. The committee shall give notice of such meetings to growers and handlers by mailing such notice to each grower and handler who has filed his address with the committee and requested such notice.

§ 915.51 Issuance of regulations.

(a) The Secretary shall regulate, in the manner specified in this section, the handling of avocados whenever he finds, from the recommendations and information submitted by the committee or from other available informa-

tion, that such regulations will tend to effectuate the declared policy of the act. Such regulations may:

(1) Prohibit, prior to such time as shall be specified, the handling of any size or sizes of any variety or varieties of avocados grown in District 1 or District 2.

(2) Prohibit the handling of any variety or varieties of avocados grown in District 1 or District 2 which do not meet such quality and maturity standards as shall be prescribed.

(3) Limit the shipment of the total quantity of avocados by prohibiting the shipment thereof: *Provided*, That no such prohibition shall be effective during any fiscal period, other than for four periods not exceeding six days each immediately prior to, including, or following July 4, Labor Day, Thanksgiving Day, and Christmas Day.

(4) Fix the size, capacity, weight, dimensions, or pack of the container or containers which may be used in the packaging, and the transportation, sale, shipment or other handling of avocados.

(5) Establish and prescribe pack specifications for the grading and packing of any variety or varieties of avocados and require that all avocados handled shall be packed in accordance with such pack specifications, and shall be identified by appropriate labels, seals, stamps, or tags, affixed to the containers by the handler under the supervision of the committee or an inspector of the Federal-State Inspection Service, showing the particular pack specifications of the lot.

(6) Provide that any or all requirements effective pursuant to paragraphs (a)(1), (2), (3), and (4) of this section applicable to the handling of avocados shall be different for the handling of avocados within the production area and for the handling of avocados between the production area and any point outside thereof.

(7) Prescribe requirements, as provided in this paragraph, applicable to exports of any variety of avocados which are different from those applicable to the handling of the same variety to other destinations.

(b) The committee shall be informed immediately of any such regulations issued by the Secretary and the committee shall promptly give notice thereof to growers and handlers.

[19 FR 3439, June 11, 1954, as amended at 20 FR 4177, June 15, 1955; 22 FR 3514, May 21, 1957. Redesignated at 26 FR 12751, Dec. 30, 1961, and amended at 36 FR 14126, July 30, 1971; 40 FR 52606, Nov. 11, 1975; 43 FR 39322, Sept. 5, 1978]

§ 915.52 Modification, suspension, or termination of regulations.

(a) In the event the committee at any time finds that, by reason of changed conditions, any regulations issued pursuant to § 915.51 should be modified, suspended, or terminated, it shall so recommend to the Secretary.

(b) Whenever the Secretary finds, from the recommendations and information submitted by the committee or from other available information, that a regulation should be modified, suspended, or terminated with respect to any or all shipments of avocados in order to effectuate the declared policy of the act, he shall modify, suspend, or terminate such regulation. If the Secretary finds that a regulation obstructs or does not tend to effectuate the declared policy of the act, he shall suspend or terminate such regulation. On the same basis and in like manner the Secretary may terminate any such modification or suspension.

§ 915.53 Exemption certificates.

Whenever a regulation is in effect pursuant to § 915.51(a)(1), the committee shall issue one or more exemption certificates to any person who furnishes proof, satisfactory to the committee, that his avocados of a particular variety are mature prior to the time such variety may be handled under such regulation. Such exemption certificates shall authorize the person to whom the certificates are issued to handle, or have handled, only that portion of his avocados of the particular variety which the committee has determined to be mature. The committee shall adopt, with the approval of the Secretary, procedural rules by which such exemption certificates will be issued and the avocados covered thereunder may be handled. Exemption certificates shall be trans-

ferred to the handler of the avocados covered by such certificates at the time the avocados are delivered to such handler.

§ 915.54 Inspection and certification.

Whenever the handling of any variety of avocados is regulated pursuant to § 915.51, each handler who handles avocados shall, prior thereto, cause each lot of avocados handled to be inspected by the Federal-State Inspection Service and certified by it as meeting the applicable requirements of such regulation: *Provided,* That such inspection and certification shall not be required whenever the avocados previously have been so inspected and certified. Promptly thereafter, each such handler shall submit, or cause to be submitted, to the committee a copy of the certificate of inspection with respect to such handling.

§ 915.55 Avocados not subject to regulations.

Except as otherwise provided in this section, any person may, without regard to the provisions of §§ 915.41, 915.51, and 915.54, and the regulations issued thereunder, handle avocados (a) for consumption by charitable institutions; (b) for distribution by relief agencies; (c) for commercial processing into products; or (d) in such minimum quantities or types of shipments as the committee, with the approval of the Secretary, may prescribe. The committee shall, with the approval of the Secretary, prescribe such rules, regulations, and safeguards as it may deem necessary to prevent avocados handled under the provisions of this section from entering channels of trade for other than the specific purposes authorized by this section. Such rules, regulations, and safeguards may include the requirements that handlers shall file applications with the committee for authorization to handle avocados pursuant to this section, and that such applications be accompanied by a certification by the intended purchaser or receiver that the avocados will not be used for any purpose not authorized by this section.

[19 FR 3439, June 11, 1954, as amended at 20 FR 4177, June 15, 1955. Redesignated at 26 FR 12751, Dec. 30, 1961]

§ 915.60 Reports.

(a) Each handler shall furnish to the committee, at such times and for such periods as the committee may designate, certified reports covering, to the extent necessary for the committee to perform its functions, the following: (1) The quantities of each variety of avocados he received; (2) a complete record of the quantities disposed of by him, segregated as to varieties and as to the respective quantities subject to regulation and not subject to regulation; (3) the date of each such disposition and the identification of the carrier transporting such fruit; (4) identification of the inspection certificates and the exemption certificates, if any, pursuant to which the fruit was handled, together with the destination of each such exempted disposition, and of all fruit handled pursuant to § 915.55; and (5) the quantity of each variety held by him at the end of the period.

(b) Upon request of the committee, made with the approval of the Secretary, each handler shall furnish to the committee, in such manner and at such times as it may prescribe, such other information as may be necessary to enable the committee to perform its duties under this part.

MISCELLANEOUS PROVISIONS

§ 915.61 Compliance.

Except as provided in this part, no person shall handle avocados, the shipment of which have been prohibited by the Secretary in accordance with the provisions of this part; and no person shall handle avocados except in conformity with the provisions of this part and the regulations issued under this part.

§ 915.62 Right of the Secretary.

The members of the committee (including successors and alternates), and any agents, employees, or representatives thereof, shall be subject to removal or suspension by the Secretary at any time. Each and every regulation, decision, determination, or other act of the committee shall be subject to the continuing right of the Secretary to disapprove of the same at any

time. Upon such disapproval, the disapproved action of the committee shall be deemed null and void, except as to acts done in reliance thereon or in accordance therewith prior to such disapproval by the Secretary.

§ 915.63 Effective time.

The provisions of this part shall become effective at such time as the Secretary may declare above his signature to this part, and shall continue in force until terminated in one of the ways specified in § 915.64.

§ 915.64 Termination.

(a) The Secretary may at any time terminate the provisions of this part by giving at least one day's notice by means of a press release or in any other manner in which he may determine.

(b) The Secretary shall terminate or suspend the operation of any and all of the provisions of this part whenever he finds that such provisions do not tend to effectuate the declared policy of the act.

(c) The Secretary shall terminate the provisions of this part at the end of any fiscal year whenever he finds that continuance is not favored by the majority of producers who, during a representative period determined by the Secretary, were engaged in the production of avocados for market: *Provided*, That such termination is announced on or before March 15 of the then current fiscal year. The Secretary shall, as soon as practicable after the close of the fiscal year ending March 31, 1956, conduct a referendum of producers and a poll of handlers to determine whether the continuation of this part is favored by them. Producers entitled to vote in such referendum shall be those who, during the fiscal year ending March 31, 1956, were engaged in producing avocados for market and the poll shall be confined to handlers who handled avocados in that same fiscal year. If it develops from said referendum and poll that (1) less than two-thirds of the producers, by number or volume of production represented in said referendum, favor the continuance of this part, or (2) handlers representing more than one-half the volume of avocados handled favor termination of this part, the Secretary shall thereupon terminate this part.

(d) The provisions of this part shall, in any event, terminate whenever the provisions of the act authorizing them cease to be in effect.

§ 915.65 Proceedings after termination.

(a) Upon the termination of the provisions of this part, the committee shall, for the purpose of liquidating the affairs of the committee, continue as trustees of all the funds and property then in its possession, or under its control, including claims for any funds unpaid or property not delivered at the time of such termination.

(b) The said trustees shall (1) continue in such capacity until discharged by the Secretary; (2) from time to time account for all receipts and disbursements and deliver all property on hand, together with all books and records of the committee and of the trustees, to such persons as the Secretary may direct; and (3) upon the request of the Secretary, execute such assignments or other instruments necessary or appropriate to vest in such person, full title and right to all of the funds, property, and claims vested in the committee or the trustees pursuant thereto.

(c) Any person to whom funds, property, or claims have been transferred or delivered, pursuant to this section, shall be subject to the same obligation imposed upon the committee and upon the trustees.

§ 915.66 Effect of termination or amendment.

Unless otherwise expressly provided by the Secretary, the termination of this part or of any regulation issued pursuant to this part, or the issuance of any amendment to either thereof, shall not (a) affect or waive any right, duty, obligation, or liability which shall have arisen or which may thereafter arise in connection with any provision of this part or any regulation issued under this part, or (b) release or extinguish any violation of this part or of any regulation issued under this part, or (c) affect or impair any rights or remedies of the Secretary or of any

other person with respect to any such violation.

§ 915.67 Duration of immunities.

The benefits, privileges, and immunities conferred upon any person by virtue of this part shall cease upon its termination, except with respect to acts done under and during the existence of this part.

§ 915.68 Agents.

The Secretary may, by designation in writing, name any officer or employee of the United States, or name any agency or division in the United States Department of Agriculture, to act as his agent or representative in connection with any of the provisions of this part.

§ 915.69 Derogation.

Nothing contained in this part is, or shall be construed to be, in derogation or in modification of the rights of the Secretary or of the United States (a) to exercise any powers granted by the act or otherwise, or (b) in accordance with such powers, to act in the premises whenever such action is deemed advisable.

§ 915.70 Personal liability.

No member or alternate member of the committee and no employee or agent of the committee shall be held personally responsible, either individually or jointly with others, in any way whatsoever, to any person for errors in judgment, mistakes, or other acts, either of commission or omission, as such member, alternate, employee, or agent, except for acts of dishonesty, willful misconduct, or gross negligence.

§ 915.71 Separability.

If any provision of this part is declared invalid or the applicability thereof to any person, circumstance, or thing is held invalid, the validity of the remainder of this part or the applicability thereof to any other person, circumstance, or thing shall not be affected thereby.

Subpart—Rules and Regulations

§ 915.110 Exemption certificates.

Exemption certificates under § 915.53 shall be issued by the Avocado Administrative Committee pursuant to the following rules and regulations:

(a) The grower must make application for exemption on a form supplied by the committee. A separate application must be made for each variety or classification of avocados and shall contain the following:

(1) Name and address of the applicant, and date of application;

(2) District in which the applicant's grove is located;

(3) Regulation from which exemption is requested;

(4) Variety for which exemption is requested;

(5) Location (by county, highway, rural route, distance from nearest town, etc.) of grove from which avocados are to be shipped pursuant to the requested exemption certificate;

(6) Information as to the average size of such avocados and the reasons why applicant believes he is entitled to an exemption certificate; and

(7) Name of the person who will handle any exempted fruit if different than the applicant.

(b) Upon receipt of an application for exemption certificate, the Avocado Administrative Committee shall check all information furnished by the applicant and shall conduct such investigations concerning the maturity of the applicant's avocados as may be necessary to determine whether the application shall be approved or denied.

(c) Approval of the application shall be evidenced by the issuance to the applicant, by the Manager of the Avocado Administrative Committee on its behalf, of one or more exemption certificates which shall authorize the handling of the quantity of the applicant's avocados which the committee has determined is mature.

(d) If the application is denied, the applicant shall be informed of such denial by written notice stating the reasons therefor.

[19 FR 5439, Aug. 26, 1954. Redesignated at 26 FR 12751, Dec. 30, 1961]

§ 915.115 Nomination procedure.

(a) Any grower who resides outside the production area and desires to be represented in a nomination meeting by a duly authorized agent and to have such grower's vote cast by such agent in the nomination and election of nominees for grower members and alternate members to fill positions on the Avocado Administrative Committee, as provided in § 915.22(b)(2), shall submit to the committee, not later than January 20, a written statement containing the following:

(1) Name of grower;

(2) Mailing address;

(3) Location of each avocado grove (either legal or from established landmarks);

(4) Number of avocado trees owned;

(5) Number of 55-pound units of avocados marketed to date during the current season;

(6) Name of the handler of the fruit marketed;

(7) Authorization, including the name and address, of the person who is to represent said grower at the nomination meeting.

(b) Any grower who has not filed the statement as prescribed in paragraph (a) of this section must be present at the nomination meeting to be eligible to have his vote counted in connection with the nomination and election of nominees.

(c) Any grower who, pursuant to the provisions of paragraph (a) of this section, has authorized an agent to cast such grower's vote, may rescind such authorization by appearing at the nomination meeting and exercising his right to vote in person.

[21 FR 78, Jan. 5, 1956. Redesignated at 26 FR 12751, Dec. 30, 1961, and amended at 48 FR 2519, Jan. 20, 1983]

§ 915.120 Handler registration.

(a) Each handler who desires to handle avocados pursuant to the exceptions in § 915.10 shall, prior thereto, register with the committee. Such registration shall be by application for registration filed with the Avocado Administrative Committee on a form, prescribed and furnished by the committee, which shall contain the following information:

(1) Name and address of applicant;

(2) Applicant's principal place(s) of business;

(3) Type of business organization (individual, corporation, partnership, etc.);

(4) If other than an individual, the names and addresses of officers, partners, etc.;

(5) Nature of business (handler, trucker, wholesaler, etc.);

(6) Number of years engaged in avocado business;

(7) Estimated seasonal volume of avocados handled;

(8) Place within production area where the avocados will be prepared for market, and name and address of person responsible for such preparation;

(9) Name and address of three references, one of which shall be a bank;

(10) Certification of accuracy of information furnished; and

(11) An agreement to comply with the provisions of this part.

(b) When the committee receives an application for registration, it shall issue the applicant a certificate of registration, if it determines based upon an investigation that the applicant may be expected to handle avacados in accordance with this part.

(c) If it is determined from the available information that the applicant is not entitled to be registered with the committee, he shall be so informed by written notice stating why the certificate of registration was not issued.

(d) Any certificate of registration issued to a handler pursuant to this section may be canceled by the committee under circumstances which would have justified denial of his application.

(e) The committee shall suspend the certificate of registration issued under this section of any handler who fails to pay assessments or furnish reports as required under this part, and so advise the handler in writing of the suspension and the effective date. The committee shall lift such suspension at such time as the handler pays such assessments and files such reports, and the committee determines that the handler may be expected to handle avacados in the future in accordance with this part.

[19 FR 5439, Aug. 26, 1954. Redesignated at 26 FR 12751, Dec. 30, 1961, and amended at 49 FR 33203, Aug. 22, 1984]

§ 915.140 Avocados not subject to regulation.

(a) *Minimum quantity.* During any one day any handler may handle not to exceed 55 pounds total of avocados exempt from the provisions of §§ 915.41, 915.51, and 915.54, and the regulations issued thereunder: *Provided,* That such exempted quantity shall not be included as part of a shipment exceeding 55 pounds.

(b) *Gift shipments.* Any handler may, exempt from the provisions of §§ 915.41, 915.51, and 915.54, and the regulations issued thereunder, handle avocados in individually addressed gift containers not exceeding 20 pounds net weight for use by the addressee other than for resale.

(c) *Commercial processing into products.* The term "commercial processing into products", as used in § 915.55(c), means the manufacture of any avocado product which is preserved by any recognized commercial process, including canning, freezing, dehydrating, drying, the addition of chemical substances, or by fermentation.

(d) *Avocados for seed.* Any handler may ship avocados to be used for seed purposes exempt from the provisions of §§ 915.41, 915.51, and 915.54, and the regulations issued thereunder: *Provided,* That such handler shall make application to the committee for an exemption prior to the loading of each shipment and that the receiver of each such shipment shall certify, on a form provided by the committee, that such fruit was used for the intended purpose, and that the residue from the seed separation process will not be allowed to enter fresh channels of trade.

[23 FR 9126, Nov. 26, 1958. Redesignated at 26 FR 12751, Dec. 30, 1961, and amended at 30 FR 10880, Aug. 21, 1965; 36 FR 1191, Jan. 26, 1971; 43 FR 23557, May 31, 1978]

§ 915.141 Handling avocados for commercial processing into products.

(a) No person shall handle any avocados for commercial processing into products unless prior to such handling such person notifies the Avocado Administrative Committee of the proposed handling and provides the committee with the name of the intended processor. If the intended processor's name is not on the Avocado Administrative Committee's current list of approved manufacturers of avocado products, as prescribed in paragraph (b) of this section, or if on the list is suspended, such person shall furnish the committee, prior to each such handling, with a statement executed by the intended processor that the avocados will be used for the stated purpose only.

(b) Any person who desires to have his name placed on the Avocado Administrative Committee's list of approved manufacturers of avocado products shall, prior to such listing, submit to the Avocado Administrative Committee an application containing the following information: (1) Name and address of applicant; (2) location of the facilities for commercial processing into products; (3) proposed type of avocado product or products to be manufactured from avocados and the proposed commercial process of preservation; (4) description of facilities for commercial processing into products; (5) quantity of avocados used in commercial processing into products during the previous fiscal year and estimate of the quantity of avocados to be similarly processed during the current fiscal year; (6) expected source of avocados for commercial processing into products; (7) method of transporting avocados and unloading point; (8) Avocado Administrative Committee handler certificate of registration number, if any; (9) a statement that the avocados obtained for commercial processing into products will be used for that purpose only and will not be resold or disposed of in fresh fruit channels; and (10) an agreement to submit such reports as are required by the Avocado Administrative Committee with approval of the Secretary.

(c) Upon receipt of an application for such listing, the Avocado Administrative Committee shall make such investigation as it deems appropriate, and if it appears that the applicant may reasonably be expected to use avocados covered by the application in accordance with, and to comply with,

the requirements of paragraph (b) of this section, it shall place the person's name on Avocado Administrative Committee's current list of approved manufacturers of avocado products.

(d) If it is determined by the committee from the available information that the applicant is not entitled to such listing he shall be so informed by written notice stating why his application was denied.

(e) Any such listing pursuant to paragraphs (b) and (c) of this section may be canceled by the committee under circumstances which would have justified denial of this application.

(f) The committee shall suspend the listing of any approved manufacturer who fails to submit reports as prescribed pursuant to the provisions of paragraph (b) of this section. The committee shall advise such manufacturer in writing of the pending suspension and shall specify the time such suspension is to become effective. Upon determination by the committee that the manufacturer has satisfied by such effective time the requirements with respect to the submission of reports the committee shall not make such suspension effective. However, if the suspension is in effect, the committee shall terminate such suspension at such time as it determines that the manufacturer has satisfied the requirements with respect to the submission of reports.

[36 FR 1191, Jan. 26, 1971]

§ 915.142 Reserve fund.

(a) The establishment of a reserve fund at an amount not to exceed approximately 3 fiscal years' operational expenses is appropriate and necessary to the maintenance and functioning of the Avocado Administrative Committee. Such reserve, including funds carried forward from prior fiscal years, shall be used to provide for the maintenance and functioning of the committee in accordance with the provisions of the marketing agreement, as amended, and this part.

(b) Terms used in this section shall have the same meaning as when used in said marketing agreement and order.

[43 FR 39323, Sept. 5, 1978. Redesignated at 45 FR 47653, July 16, 1980]

§ 915.150 Reports.

(a) Each handler shall file with the Avocado Administrative Committee, on a weekly basis, a report of all avocados received by him. Such report shall be on forms prescribed by the committee and shall include: (1) The name and address of the handler; (2) weekly period covered by the report; (3) district in which the avocados were received; and (4) the quantity of each variety of avocados received. Each such report shall be filed with the committee not later than one week after the close of business of the last day of the period covered by the report.

(b) Each handler registered with the Avocado Administrative Committee shall render a report to the committee of the disposition of each lot of noncertified avocados removed from the premises of his handling facilities during each week in which any avocados are handled subject to the provisions of §§ 915.41, 915.51, and 915.54, or exemptions therefrom pursuant to § 915.53. Such report shall be on forms prescribed by the committee and shall include: (1) The quantity; (2) purpose for which removed; (3) date of removal; and (4) the name of the person or firm to which the avocados were delivered or consigned. Each such report shall be signed by the handler or his authorized representative, shall cover the period Sunday through Saturday, and shall be placed in the mail not later than one week after the close of business of the Saturday ending the period covered by the report.

(c) Each handler shall render a report to the Avocado Administrative Committee of each lot of noncertified avocados received from a district other than that in which his handling facilities are located. Such report shall be on forms prescribed by the committee and shall include: (1) The name of the handler; (2) the quantity of avocados received; (3) date received; (4) name and address of the person from whom the avocados were purchased; (5) the district from which the avocados were transferred; and (6) the district to

which the avocados were transferred. Each such report shall cover the period Sunday through Saturday and shall be placed in the mail not later than one week after the close of business of the Saturday ending the period covered by the report.

[21 FR 6695, Sept. 6, 1956, as amended at 21 FR 7368, Sept. 27, 1956. Redesignated at 26 FR 12751, Dec. 30, 1961, and amended at 44 FR 20629, Apr. 6, 1979]

§ 915.155 Delinquent assessments.

Each handler shall pay interest of one percent per month on any unpaid assessment balance beginning 30 days after date of billing. Such interest charge is to apply to any unpaid assessments which become due the Avocado Administrative Committee after the effective date of this section.

[40 FR 50024, Oct. 28, 1975]

§ 915.160 Public member eligibility requirements and nomination procedures.

(a) Public member and alternate member candidates shall not represent an agricultural interest, and shall not have a financial interest in, or be associated with the production, processing, financing, or marketing of avocados.

(b) Public member and alternate member candidates should be able to devote sufficient time to attend committee activities regularly and to familiarize themselves with the background and economics of the avocado industry.

(c) The public member and alternate member shall be a resident of the production area.

(d) The public member and alternate member should be nominated by the Avocado Administrative Committee, and shall serve a one-year term which coincides with the term of the producer and handler members of the committee.

[44 FR 9370, Feb. 13, 1979]

NOTE: After January 1, 1979, "Budget of Expenses and Rate of Assessment" regulations (e.g. sections .200 through .299) and "Handling" regulations (e.g. sections .310 through .399) which are in effect for a year or less, will not be carried in the Code of Federal Regulations. For FEDERAL REGISTER citations affecting these regulations, see the "List of CFR Sections Affected" in this volume.

Subpart—Container and Pack Regulations

§ 915.305 Florida Avocado Container Regulation 5.

(a) On and after September 12, 1984 no handler shall handle any avocados for the fresh market from the production area to any point outside thereof in containers having a capacity of more than 4 pounds of avocados unless the containers meet the requirements specified in this section: *Provided,* That the containers authorized in this section shall not be used for handling avocados for commercial processing into products pursuant to § 915.55(c).

(1) Containers with inside dimensions of 11⅜ x 16 x 11 or 11 x 16¾ x 10 or 13½ x 16½ x 9 inches or 12¾ x 15¼ x 10¾ inches: *Provided,* That (i) the net weight of the avocados in such a container shall be not less than 34 pounds, except that for avocados of unnamed varieties, which are avocados that have not been given varietal names, and for Booth 1, Fuchs, and Trapp varieties, such weight shall be not less than 32 pounds; (ii) with respect to each lot of such containers, not to exceed 10 percent, by count, of the individual containers in the lot may fail to meet the applicable specified weight but no container in such lot may contain a net weight of avocados exceeding 2 pounds less than the specified net weight, and (iii) each avocado in such container in a lot shall weigh at least 16 ounces, except that not to exceed 10 percent, by count, of the fruit in the lot may fail to meet such weight requirement but not more than double such tolerance shall be permitted for an individual container in the lot.

(2) Containers with inside dimensions of 14½ x 11^{1}⁄$_{16}$ and depth varying from 3½ to 5 inches: *Provided,* That such containers shall only be used for export shipments.

(3) Containers with inside dimensions of 13½ x 16½ x 3¼ inches.

(4) Containers with inside dimensions of 13½ x 16½ x 3¾ inches.

(5) Containers with inside dimensions of 13½ x 16½ x 4½ inches.

(6) Containers with inside dimensions of 13½ x 16½ x 5 inches.

(7) Containers with inside dimensions of 13½ x 16½ x 6 inches.

(8) Containers with inside dimensions of 12¾ x 15¼ with depth varying from 3½ to 5 inches.

(9) Containers with inside dimensions of 11¼ x 16¾ x 3⅞ to inches.

(10) Containers with inside dimensions of 13½ x 16½ and depth varying from 6½ to 8 inches.

(11) Containers with inside dimensions of 12¾ x 15¼ and depth varying from 7½ to 8¼ inches.

(12) Containers with inside dimensions of 11¼ x 13¾ and depth varying from 7 to 7½ inches.

(13) Such other types and sizes of containers as may be approved by the Avocado Administrative Committee for testing in connection with a research project conducted by or in cooperation with the said committee: *Provided,* That the handling of each lot of avocados in such test containers shall be subject to the prior approval, and under the supervision, of the Avocado Administrative Committee.

(14) With respect to the containers prescribed in paragraph (a)(2) of this section, all avocados packed in such containers shall be placed in one layer only and the net weight of all avocados in any such container shall not be less than 8.5 pounds: *Provided,* That not to exceed 5 percent, by count, of such containers in any lot may fail to meet such weight requirement.

(15) With respect to the containers prescribed in paragraphs (a)(3) through (a)(9) of this section, all avocados packed in such containers shall be placed in one layer only and the net weight of all avocados in any such container shall be not less than 12½ pounds: *Provided,* That not to exceed 5 percent, by count, of such containers in any lot may fail to meet such weight requirement.

(16) With respect to the containers prescribed in paragraph (a)(10), (a)(11), and (a)(12) of this section, all avocados in such containers shall be placed in two layers and the net weight of the avocados in any such container shall be not less than 25 pounds: *Provided,* That not to exceed 5 percent, by count, of such containers in any lot may fail to meet the applicable net weight requirement: *Provided further,* That the requirement as to placing avocados in two layers only shall not apply to such container if each of the avocados therein weighs 14 ounces or less.

(b) The limitations set forth in paragraph (a) of this section shall not apply to master containers for individual packages of avocados: *Provided,* That the individual packages within such master container are of a capacity not exceeding four pounds and the markings or labels, if any, on such packages do not conflict with the markings or labels on the master container.

[47 FR 22074, May 21, 1982, as amended at 47 FR 29648, July 8, 1982; 49 FR 1049, Jan. 9, 1984; 49 FR 7553, Mar. 1, 1984; 49 FR 36360, Sept. 17, 1984; 49 FR 44447, Nov. 7, 1984]

§ 915.306 Florida avocado grade, pack, and container marking regulation.

(a) On and after August 13, 1985, no handler shall handle any variety of avocados grown in the production area, except for avocados handled within the production area in containers other than those authorized in § 915.305, unless:

(1) Such avocados grade at least U.S. No. 2.

(2) Such avocados are packed in containers in accordance with standard pack.

(3) Such avocados, except for those in export shipments, are in containers marked with the grade of the fruit in letters and numbers at least 1 inch in height on the top and 2 sides of the lid of the container, effective each fiscal year from the first Monday after July 15 until the first Monday after January 1.

(4) Such avocados are in containers marked with the Federal-State Inspection Service lot stamp number.

(b) The provisions of paragraphs (a)(2), (a)(3), and (a)(4) of this section shall not apply to individual packages of avocados weighing 4 pounds or less, net weight, in master containers.

(c) Terms pertaining to grades and standard pack mean the same as those defined in the United States Standards for Florida Avocados (7 CFR 51.3050-3069).

[50 FR 32553, Aug. 13, 1985]

PART 916—NECTARINES GROWN IN CALIFORNIA

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916.356 Nectarine Regulation 14.

AUTHORITY: Secs. 1-19, 48 Stat. 31, as amended; 7 U.S.C. 601-774.

Subpart—Order Regulating Handling

SOURCE: 23 FR 4616, June 25, 1958, unless otherwise noted. Redesignated at 26 FR 12751, Dec. 30, 1961.

DEFINITIONS

§ 916.1 Secretary.

"Secretary" means the Secretary of Agriculture of the United States, or any officer or employee of the Department to whom authority has heretofore been delegated, or to whom authority may hereafter be delegated, to act in his stead.

§ 916.2 Act.

"Act" means Public Act No. 10, 73d Congress (May 12, 1933), as amended

and as reenacted and amended by the Agricultural Marketing Agreement Act of 1937, as amended (48 Stat. 31, as amended; 7 U.S.C. 601 et seq.; 68 Stat. 906, 1047).

§ 916.3 Person.

"Person" means an individual, partnership, corporation, association, or any other business unit.

§ 916.4 Production area.

"Production area" means the State of California.

§ 916.5 Nectarines.

"Nectarines" means all varieties of Prunus Amygdalus Nectarina, commonly called nectarines, grown in the production area.

§ 916.6 Varieties.

"Varieties" means and includes all classifications or subdivisions of nectarines.

§ 916.7 Fiscal period.

"Fiscal period" is synonymous with fiscal year and means the 12-month period beginning on March 1 of one year and ending on the last day of February of the following year or such other period as the committee, with the approval of the Secretary, may prescribe.

§ 916.8 Committee.

"Committee" means the Nectarine Administrative Committee established pursuant to § 916.20.

§ 916.9 Grower.

"Grower" is synonymous with producer and means any person who produces nectarines for the fresh market and who has a proprietary interest therein.

§ 916.10 Handler.

"Handler" is synonymous with shipper and means any person (except a common or contract carrier transporting nectarines owned by another person) who handles nectarines.

§ 916.11 Handle.

"Handle" and ship are synonymous and mean to sell, consign, deliver, or transport nectarines, or to cause nectarines to be sold, consigned, delivered, or transported, between the production area and any point outside thereof, or within the production area: *Provided,* That the term handle shall not include the sale of nectarines on the tree, the transportation within the production area of nectarines from the orchard where grown to a packing facility located within such area for preparation for market, or the delivery of such nectarines to such packing facility for such preparation.

§ 916.12 District.

"District" means the applicable one of the following described subdivisions of the production area or such other subdivision as may be prescribed pursuant to § 916.31:

(a) "District 1" shall include the counties of Madera, Fresno, and Kings and that portion of Tulare County north of the 4th Standard Parallel south of the Mount Diablo Base Line of the General Land Office.

(b) "District 2" shall include that portion of Tulare County not included in District 1.

(c) "District 3" shall include all of the production area lying south of the northern boundaries of the counties of San Luis Obispo, Kern, and San Bernardino.

(d) "District 4" shall include the counties of Merced, Stanislaus, and the balance of the production area.

[31 FR 8176, June 10, 1966]

§ 916.13 Pack.

"Pack" means the specific arrangement, size, weight, count, or grade of a quantity of nectarines in a particular type and size of container, or any combination thereof.

§ 916.14 Container.

"Container" means a box, bag, crate, lug, basket, carton, package, or any other type of receptacle used in the packaging or handling of nectarines.

§ 916.15 Marketing season.

"Marketing season" means the period beginning on May 1 and ending on November 30 of any year.

ADMINISTRATIVE BODY

§ 916.20 Establishment and membership.

There is hereby established a Nectarine Administrative Committee consisting of eight members, each of whom shall have an alternate who shall have the same qualifications as the member for whom he is an alternate. The members and their alternates shall be growers or employees of growers. Five of the members and their respective alternates shall be producers of nectarines in District 1. One member and his alternate shall be producers of nectarines in District 2; one of the members and his alternate shall be producers of nectarines in District 3; and one member and his alternate shall be producers of nectarines in District 4.

[31 FR 8176, June 10, 1966]

§ 916.21 Term of office.

The term of office of each member and alternate member of the committee shall be for 2 years beginning on March 1 of an odd numbered year and ending on the last day of February of an odd numbered year. Members and alternate members shall serve in such capacities for the portion of the term of office for which they are selected and have qualified and until their respective successors are selected and have qualified.

[36 FR 9290, May 22, 1971]

§ 916.22 Nomination.

(a) *Initial members.* Nominations for each of the initial members, together with nominations for the initial alternate members for each position, may be submitted to the Secretary by the committee responsible for promulgation of this part. Such nominations may be made by means of group meetings of the growers concerned in each district. Such nominations, if made, shall be filed with the Secretary no later than the effective date of this part. In the event nominations for initial members and alternate members of the committee are not filed pursuant to, and within the time specified in, this section, the Secretary may select such initial members and alternate members without regard to nominations, but selections shall be on the basis of the representation provided in § 916.20.

(b) *Successor members.* (1) The committee shall hold or cause to be held, not later than February 15 of each odd numbered year, a meeting or meetings of growers in each district for the purpose of designating nominees for successor members and alternate members of the committee. These meetings shall be supervised by the committee which shall prescribe such procedure as shall be reasonable and fair to all persons concerned.

(2) Only growers who are present at such nomination meetings, or represented at such meetings by duly authorized employees, may participate in the nomination and election of nominees for members and their alternates.

(3) A particular grower, including employees of such grower, shall be eligible for membership as principal or alternate to fill only one position on the committee.

[23 FR 4616, June 25, 1958. Redesignated at 26 FR 12751, Dec. 30, 1961, and amended at 31 FR 8176, June 10, 1966; 36 FR 9290, May 22, 1971]

§ 916.23 Selection.

From the nominations made pursuant to § 916.22, or from other qualified persons, the Secretary shall select the eight members of the committee and an alternate for each such member.

§ 916.24 Failure to nominate.

If nominations are not made within the time and in the manner prescribed in § 916.22, the Secretary may, without regard to nominations, select the members and alternate members of the committee on the basis of the representation provided for in § 916.20.

§ 916.25 Acceptance.

Any person selected by the Secretary as a member or as an alternate member of the Committee shall qualify by filing a written acceptance with the Secretary promptly after being notified of such selection.

§ 916.26 Vacancies.

To fill any vacancy occasioned by the failure of any person selected as a

member or as an alternate member of the committee to qualify, or in the event of the death, removal, resignation, or disqualification of any member or alternate member of the committee, a successor for the unexpired term of such member or alternate member of the committee shall be nominated and selected in the manner specified in §§ 916.22 and 916.23. If the names of nominees to fill any such vacancy are not made available to the Secretary within a reasonable time after such vacancy occurs, the Secretary may fill such vacancy without regard to nominations, which selection shall be made on the basis of representation provided for in § 916.20.

§ 916.27 Alternate members.

An alternate member of the committee, during the absence of the member for whom he is an alternate, shall act in the place and stead of such member and perform such other duties as assigned. In the event of the death, removal, resignation, or disqualification of a member, his alternate shall act for him until a successor for such member is selected and has qualified. In the event both a member of the committee and his alternate are unable to attend a committee meeting, the member or the committee members present may designate any other alternate to serve in such member's place and stead provided such action is necessary to secure a quorum.

[23 FR 4616, June 25, 1958. Redesignated at 26 FR 12751, Dec. 30, 1961, and amended at 31 FR 8176, June 10, 1966]

§ 916.30 Powers.

The committee shall have the following powers:

(a) To administer the provisions of this part in accordance with its terms;

(b) To receive, investigate, and report to the Secretary complaints of violations of the provisions of this part;

(c) To make and adopt rules and regulations to effectuate the terms and provisions of this part; and

(d) To recommend to the Secretary amendments to this part.

§ 916.31 Duties.

The committee shall have, among others, the following duties:

(a) To select a chairman and such other officers as may be necessary, and to define the duties of such officers;

(b) To appoint such employees, agents, and representatives as it may deem necessary, and to determine compensation and to define the duties of each;

(c) To submit to the Secretary as soon as practicable after the beginning of each fiscal period a budget for such fiscal period, including a report in explanation of the items appearing therein and a recommendation as to the rate of assessment for such period;

(d) To keep minutes, books, and records which will reflect all of the acts and transactions of the committee and which shall be subject to examination by the Secretary;

(e) To prepare periodic statements of the financial operations of the committee and to make copies of each such statement available to growers and handlers for examination at the office of the committee;

(f) To cause its books to be audited by a competent public accountant at least once each fiscal year and at such times as the Secretary may request;

(g) To act as intermediary between the Secretary and any grower or handler;

(h) To investigate and assemble data on the growing, handling, and marketing conditions with respect to nectarines;

(i) To submit to the Secretary the same notice of meetings of the committee as is given to its members;

(j) To submit to the Secretary such available information as he may request;

(k) To investigate compliance with the Provisions of this part;

(l) With the approval of the Secretary, to redefine the districts into which the production area is divided and to reapportion the representation of any district on the committee: *Provided*, That any such changes shall reflect, insofar as practicable, shifts in nectarine production within the districts and the production area.

§ 916.32 Procedure.

(a) Six members of the committee, or alternates acting for members, shall constitute a quorum and any action of the committee shall require the concurring vote of the majority of those present: *Provided,* That actions of the committee with respect to expenses and assessments, or recommendations for regulations pursuant to §§ 916.50 to 916.55, shall require at least six concurring votes.

(b) The committee may vote by telephone, telegraph, or other means of communication, and any votes so cast shall be confirmed promptly in writing: *Provided,* That if an assembled meeting is held, all votes shall be cast in person.

[23 FR 4616, June 25, 1958. Redesignated at 26 FR 12751, Dec. 30, 1961, and amended at 31 FR 8176, June 10, 1966]

§ 916.33 Expenses and compensation.

The members of the committee, and alternates when acting as members, shall serve without compensation but shall be reimbursed for expenses necessarily incurred by them in the performance of their duties under this part: *Provided,* That the committee at its discretion may request the attendance of one or more alternates at any or all meetings notwithstanding the expected or actual presence of the respective members and may pay expenses as aforesaid.

[31 FR 8177, June 10, 1966]

§ 916.34 Annual report.

The committee shall, as soon as is practicable after the close of each marketing season, prepare and mail an annual report to the Secretary and make a copy available to each grower and handler who requests a copy of the report.

§ 916.37 Shippers' Advisory Committee.

(a) A Shippers' Advisory Committee, consisting of five members and their respective alternates who shall be handlers, or employees of handlers, selected by the handlers in accordance with the provisions of this section, is hereby established. The members and their respective alternates shall be selected biennially for a term ending on the last day of February of odd numbered years. An alternate member shall, in the event of the member's absence from a meeting of the committee, act in the place and stead of such member, and, in the event of a vacancy in the office of such member, shall act in the place and stead of such member until a successor for the unexpired term of such member has been selected.

(b) The members and alternate members of the Shippers' Advisory Committee shall be elected by handlers at a general meeting of all handlers and shall serve in such capacities during the marketing seasons subsequent to such election. Such meeting shall be supervised by the Nectarine Administrative Committee which may prescribe such rules and procedures as may be necessary to assure a membership representative of all shippers.

(c) The Shippers' Advisory Committee may attend each meeting of the Nectarine Administrative Committee held to consider recommendations with respect to regulations of shipments pursuant to the provisions of this subpart. The Shippers' Advisory Committee may advise the committee on matters relating to such recommendations, but shall have no vote with such committee in any matter. Members of the Shippers' Advisory Committee shall serve without compensation but may be reimbursed for expenses necessarily incurred in attendance of meetings of the Nectarine Administrative Committee.

[23 FR 4616, June 25, 1958. Redesignated at 26 FR 12751, Dec. 30 1961, and amended at 36 FR 9290, May 22, 1971]

Expenses and Assessments

§ 916.40 Expenses.

The committee is authorized to incur such expenses as the Secretary finds are reasonable and likely to be incurred by the committee for its maintenance and functioning and to enable it to exercise its powers and perform its duties in accordance with the provisions of this part. The funds to cover such expenses shall be acquired in the manner prescribed in § 916.41.

§ 916.41 Assessments.

(a) As his pro rata share of the expenses which the Secretary finds are reasonable and likely to be incurred by the committee during a fiscal period, each person who first handles nectarines during such period shall pay to the committee, upon demand, assessments on all nectarines so handled. The payment of assessments for the maintenance and functioning of the committee may be required under this part throughout the period it is in effect irrespective of whether particular provisions thereof are suspended or become inoperative.

(b) The Secretary shall fix the rate of assessment to be paid by each such person during a fiscal period in an amount designed to secure sufficient funds to cover the expenses which may be incurred during such period and to accumulate and maintain a reserve fund equal to approximately one fiscal period's expenses. At any time during or after the fiscal period, the Secretary may increase the rate of assessment in order to secure sufficient funds to cover any later finding by the Secretary relative to the expenses which may be incurred. Such increase shall be applied to all nectarines handled during the applicable fiscal period. In order to provide funds for the administration of the provisions of this part during the first part of a fiscal period before sufficient operating income is available from assessments on the current year's shipments, the committee may accept the payment of assessments in advance, and may also borrow money for such purposes.

§ 916.42 Accounting.

(a) If, at the end of a fiscal period, the assessments collected are in excess of expenses incurred, such excess shall be accounted for in accordance with one of the following:

(1) If such excess is not retained in a reserve, as provided in paragraph (a)(2) of this section, it shall be refunded proportionately to the persons from whom it was collected: *Provided,* That any sum paid by a person in excess of his pro rata share of the expenses during any fiscal period may be applied by the committee at the end of such fiscal period to any outstanding obligations due the committee from such person.

(2) The committee, with the approval of the Secretary, may carry over such excess into subsequent fiscal periods as a reserve: *Provided,* That funds already in the reserve do not equal approximately one fiscal period's expenses. Such reserve funds may be used (i) to defray expenses, during any fiscal period, prior to the time assessment income is sufficient to cover such expenses, (ii) to cover deficits incurred during any fiscal year when assessment income is less than expenses, (iii) to defray expenses incurred during any period when any or all provisions of this part are suspended or are inoperative, (iv) to cover necessary expenses of liquidation in the event of termination of this part. Upon such termination, any funds not required to defray the necessary expenses of liquidation shall be disposed of in such manner as the Secretary may determine to be appropriate: *Provided,* That to the extent practical, such funds shall be returned pro rata to the persons from whom such funds were collected.

(b) All funds received by the committee pursuant to the provisions of this part shall be used solely for the purpose specified in this part and shall be accounted for in the manner provided in this part. The Secretary may at any time require the committee and its members to account for all receipts and disbursements.

(c) Upon the removal or expiration of the term of office of any member of the committee, such member shall account for all receipts and disbursements and deliver all property and funds in his possession to the committee, and shall execute such assignments and other instruments as may be necessary or appropriate to vest in the committee full title to all of the property, funds, and claims vested in such member pursuant to this part.

Research

§ 916.45 Marketing research and development.

The committee, with the approval of the Secretary, may establish or pro-

vide for the establishment of production research, marketing research and development projects designed to assist, improve, or promote the marketing, distribution and consumption or efficient production of nectarines. Such projects may provide for any form of marketing promotion including paid advertising. The expense of such projects shall be paid by funds collected pursuant to § 916.41.

[36 FR 9290, May 22, 1971]

REGULATIONS

§ 916.50 Marketing policy.

(a) Each season prior to making any recommendations pursuant to § 916.51, the committee shall submit to the Secretary a report setting forth its marketing policy for the ensuing marketing season. Such marketing policy report shall contain information relative to:

(1) The estimated total production of nectarines within the production area;

(2) The expected general quality and size of nectarines in the production area and in other areas;

(3) The expected demand conditions for nectarines in different market outlets;

(4) The expected shipments of nectarines produced in the production area and in areas outside the production area;

(5) Supplies of competing commodities;

(6) Trend and level of consumer income;

(7) Other factors having a bearing on the marketing of nectarines; and

(8) The type of regulations expected to be recommended during the marketing season.

§ 916.51 Recommendations for regulation.

(a) Whenever the committee deems it advisable to regulate the handling of any variety or varieties of nectarines in the manner provided in § 916.52, it shall so recommend to the Secretary.

(b) In arriving at its recommendations for regulation pursuant to paragraph (a) of this section, the committee shall give consideration to current information with respect to the factors affecting the supply and demand for nectarines during the period or periods when it is proposed that such regulations should be made effective. With each such recommendation for regulation, the committee shall submit to the Secretary the data and information on which such recommendation is predicated and such other available information as the Secretary may request.

§ 916.52 Issuance of regulations.

(a) The Secretary shall regulate, in the manner specified in this section, the handling of nectarines whenever he finds, from the recommendations and information submitted by the committee, or from other available information, that such regulations will tend to effectuate the declared policy of the act. Such regulations may:

(1) Limit, during any period or periods, the shipment of any particular grade, size, quality, maturity, or pack, or any combination thereof, of any variety or varieties of nectarines grown in the production area;

(2) Limit the shipment of nectarines by establishing, in terms of grades, sizes, or both, minimum standards of quality and maturity during any period when season average prices are expected to exceed the parity level;

(3) Fix the size, capacity, weight, dimensions, markings, or pack of the container, or containers, which may be used in the packaging or handling of nectarines.

(b) The committee shall be informed immediately of any such regulation issued by the Secretary and the committee shall promptly give notice thereof to handlers.

§ 916.53 Modification, suspension, or termination of regulations.

(a) In the event the committee at any time finds that, by reason of changed conditions, any regulations issued pursuant to § 916.52 should be modified, suspended, or terminated, it shall so recommend to the Secretary.

(b) Whenever the Secretary finds from the recommendations and information submitted by the committee or from other available information, that a regulation should be modified, sus-

pended, or terminated with respect to any or all shipments of nectarines in order to effectuate the declared policy of the act, he shall modify, suspend, or terminate such regulation. If the Secretary finds that a regulation obstructs or does not tend to effectuate the declared policy of the act, he shall suspend or terminate such regulation. On the same basis and in like manner the Secretary may terminate any such modification or suspension.

§ 916.54 Special purpose shipments.

(a) Except as otherwise provided in this section, any person may, without regard to the provisions of §§ 916.41, 916.52, 916.53, and 916.55, and the regulations issued thereunder, handle nectarines (1) for consumption by charitable institutions; (2) for distribution by relief agencies; or (3) for commercial processing into products.

(b) Upon the basis of recommendations and information submitted by the committee, or from other available information, the Secretary may relieve from any or all requirements, under or established pursuant to §§ 916.41, 916.52, 916.53, or 916.55, the handling of nectarines (1) to designated market areas within the State of California; or (2) for such specified purposes (including shipments to facilitate the conduct of marketing research and development projects established pursuant to § 916.45), or in such minimum quantities or types of shipments, as may be prescribed.

(c) The committee shall, with the approval of the Secretary, prescribe such rules, regulations, and safeguards as it may deem necessary to prevent nectarines handled under the provisions of this section from entering the channels of trade for other than the specific purposes authorized by this section. Such rules, regulations, and safeguards may include the requirements that handlers shall file applications and receive approval from the committee for authorization to handle nectarines pursuant to this section, and that such applications be accompanied by a certification by the intended purchaser or receiver that the nectarines will not be used for any purpose not authorized by this section.

§ 916.55 Inspection and certification.

(a) Whenever the handling of any variety of nectarines is regulated pursuant to § 916.52, or § 916.53, each handler who handles nectarines shall, prior thereto, cause such nectarines to be inspected by the Federal or Federal-State Inspection Service and certified as meeting the applicable requirements of such regulation: *Provided*, That inspection and certification shall not be required for nectarines which previously have been so inspected and certified if such prior inspection was performed within such period as may be established pursuant to paragraph (b) of this section. Promptly after inspection and certification, each such handler shall submit, or cause to be submitted, to the committee a copy of the certificate of inspection issued with respect to such nectarines. The committee may, with the approval of the Secretary, prescribed rules and regulations waiving the inspection requirements of this section where it is determined that inspection is not available: *Provided*, That all shipments made under such waiver shall comply with all regulations in effect.

(b) The committee may, with the approval of the Secretary, establish a period prior to shipment during which the inspection required by this section must be performed.

(c) The committee may enter into an agreement with the Federal and Federal-State Inspection Services with respect to the costs of the inspection required by paragraph (a) of this section, and may collect from handlers their respective pro rata shares of such costs.

Reports

§ 916.60 Reports.

(a) Each handler shall furnish to the committee, at such times and for such periods as the committee may designate, certified reports covering, to the extent necessary for the committee to perform its functions, each shipment of nectarines as follows:

(1) The name of the shipper and the shipping point;

(2) The car or truck license number (or name of the trucker), and identification of the carrier;

(3) The date and time of departure;

(4) The number and type of containers in the shipment;

(5) The quantities shipped, showing separately the variety, grade, and size of the fruit;

(6) The destination;

(7) Identification of the inspection certificate or waiver pursuant to which the fruit was handled.

(b) Upon request of the committee, made with the approval of the Secretary, each handler shall furnish to the committee, in such manner and at such times as it may prescribe, such other information as may be necessary to enable the committee to perform its duties under this part.

(c) Each handler shall maintain for at least two succeeding fiscal years, such records of the nectarines received and disposed of by him as may be necessary to verify the reports he submits to the committee pursuant to this section.

(d) All reports and records submitted by handlers pursuant to the provisions of this section shall be received by, and at all times be in custody of, one or more designated employees of the committee. No such employee shall disclose to any person, other than the Secretary upon request therefor, data or information obtained or extracted from such reports and records which might affect the trade position, financial condition, or business operation of the particular handler from whom received: *Provided,* That such data and information may be combined, and made available to any person, in the form of general reports in which the identities of the individual handler furnishing the information is not disclosed and may be revealed to any extent necessary to effect compliance with the provisions of this part and the regulations issued thereunder.

Miscellaneous Provisions

§ 916.61 Compliance.

Except as provided in this part, no person shall handle nectarines, the shipment of which has been prohibited by the Secretary in accordance with the provisions of this part; and no person shall handle nectarines except in conformity with the provisions of this part and the regulations issued under this part.

§ 916.62 Right of the Secretary.

The members of the committee (including successors and alternates), and any agents, employees, or representatives thereof, shall be subject to removal or suspension by the Secretary at any time. Each and every regulation, decision, determination, or other act of the committee shall be subject to the continuing right of the Secretary to disapprove of the same at any time. Upon such disapproval, the disapproved action of the committee shall be deemed null and void, except as to acts done in reliance thereon or in accordance therewith prior to such disapproval by the Secretary.

§ 916.63 Effective time.

The provisions of this part, and of any amendment thereto, shall become effective at such time as the Secretary may declare above his signature and shall continue in force until terminated in one of the ways specified in § 916.64.

§ 916.64 Termination.

(a) The Secretary may at any time terminate the provisions of this part by giving at least one day's notice by means of a press release or in any other manner in which he may determine.

(b) The Secretary shall terminate or suspend the operation of any and all of the provisions of this part whenever he finds that such provisions do not tend to effectuate the declared policy of the act.

(c) The Secretary shall terminate the provisions of this part whenever he finds by referendum or otherwise that such termination is favored by a majority of the growers: *Provided,* That such majority has, during the current marketing season, produced more than 50 percent of the volume of the nectarines which were produced within the production area for shipment in fresh form. Such termination shall become effective on the first day

of March subsequent to the announcement thereof by the Secretary.

(d) The committee shall consider all petitions from growers submitted to it for termination of this part provided such petitions are received by the committee prior to October 1 of the then current fiscal period. Upon recommendation of the committee received not later than December 1 of the then current fiscal period, the Secretary shall conduct a referendum among the growers prior to February 15 of such fiscal period to ascertain whether continuance of this part is favored by producers.

(e) The Secretary shall conduct a referendum within the period beginning December 1, 1974, and ending February 15, 1975, to ascertain whether continuance of this part is favored by the growers. The Secretary shall conduct such referendum within the same period of every fourth fiscal period thereafter.

(f) The provisions of this part shall, in any event, terminate whenever the provisions of the act authorizing them cease to be in effect.

[23 FR 4616, June 25, 1958. Redesignated at 26 FR 12751, Dec. 30, 1961, and amended at 31 FR 8177, June 10, 1966; 36 FR 9290, May 22, 1971]

§ 916.65 Proceedings after termination.

(a) Upon the termination of the provisions of this part, the committee shall, for the purpose of liquidating the affairs of the committee, continue as trustee of all the funds and property then in its possession, or under its control, including claims for any funds unpaid or property not delivered at the time of such termination.

(b) The said trustees shall (1) continue in such capacity until discharged by the Secretary; (2) from time to time account for all receipts and disbursements and deliver all property on hand, together with all books and records of the committee and of the trustees, to such persons as the Secretary may direct; and (3) upon the request of the Secretary, execute such assignments or other instruments necessary or appropriate to vest in such person, full title and right to all of the funds, property, and claims vested in the committee or the trustees pursuant thereto.

(c) Any person to whom funds, property, or claims have been transferred or delivered, pursuant to this section, shall be subject to the same obligation imposed upon the committee and upon the trustees.

§ 916.66 Effect of termination or amendment.

Unless otherwise expressly provided by the Secretary, the termination of this part or of any regulation issued pursuant to this part, or the issuance of any amendment to either thereof, shall not (a) affect or waive any right, duty, obligation, or liability which shall have arisen or which may thereafter arise in connection with any provision of this part or any regulation issued under this part, or (b) release or extinguish any violation of this part or of any regulation issued under this part, or (c) affect or impair any rights or remedies of the Secretary or of any other person with respect to any such violation.

§ 916.67 Duration of immunities.

The benefits, privileges, and immunities conferred upon any person by virtue of this part shall cease upon its termination, except with respect to acts done under and during the existence of this part.

§ 916.68 Agents.

The Secretary may, by designation in writing, name any officer or employee of the United States, or name any agency or division in the United States Department of Agriculture, to act as his agent or representative in connection with any of the provisions of this part.

§ 916.69 Derogation.

Nothing contained in this part is, or shall be construed to be, in derogation or in modification of the rights of the Secretary or of the United States (a) to exercise any powers granted by the act or otherwise, or (b) in accordance with such powers, to act in the premises whenever such action is deemed advisable.

§ 916.70 Personal liability.

No member or alternate member of the committee and no employee or agent of the committee shall be held personally responsible, either individually or jointly with others, in any way whatsoever, to any person for errors in judgment, mistaken, or other acts, either of commission or omission, as such member, alternate, employee, or agent, except for acts of dishonesty, willful misconduct, or gross negligence.

§ 916.71 Separability.

If any provision of this part is declared invalid or the applicability thereof to any person, circumstance, or thing is held invalid, the validity of the remainder of this part or the applicability thereof to any other person, circumstance, or thing shall not be affected thereby.

Subpart—Rules and Regulations

§ 916.102 Procedure for nominating members and alternate members for the Nectarine Administrative Committee and the Shippers' Advisory Committee.

(a) The manager of the Nectarine Administrative Committee shall arrange for, and publicize, meetings of growers and shippers for the purpose of nominating members and alternate members for the Nectarine Administrative Committee and the Shippers' Advisory Committee. One growers' nomination meeting shall be held in each district. The shippers' nomination meeting shall be held in the district which, during the preceding year, produced the most nectarines. So far as possible, these meetings shall be held jointly with nomination meetings scheduled by the Control Committee, established under Order No. 917, as amended (7 CFR Part 917), known as the California Tree Fruit Agreement. Each such meeting shall be attended by one or more employees of the Nectarine Administrative Committee. Members of the Agricultural Extension Service of the University of California may be authorized by the Manager to assist in publicizing such meetings.

(b) Eligible voters assembled at nomination meetings may select a chairman and secretary, but in the event none of the aforesaid employees of the Nectarine Administrative Committee is selected as secretary, one such employee shall, nevertheless, record all nominations made.

(c) The nominations at any meeting shall be conducted according to Robert's Rules of Order. Voting may be by secret ballot or by acclamation in accordance with the desire of the majority of the eligible voters attending the meeting.

(d) No individual, whether representing a corporation or otherwise, may cast more than one vote for each nominee to be selected at the meeting where such individual is eligible to participate in the selection of nominees.

[25 FR 239, Jan. 13, 1960. Redesignated at 26 FR 12751, Dec. 30, 1961]

§ 916.105 Redefinition of certain districts.

The subdivisions of the production area are redefined and renumbered as follows:

(a) "District 1" shall include the counties of Madera, Fresno, and Kings and that portion of Tulare County north of the 4th Standard Parallel south of Mount Diablo Base Line of the General Land Office.

(b) "District 2" shall include that portion of Tulare County not included in District 1.

(c) "District 3" shall include all of the production area lying south of the northern boundaries of the counties of San Luis Obispo, Kern, and San Bernardino.

(d) "District 4" shall include the counties of Merced and Stanislaus and the balance of the production area.

[29 FR 3419, Mar. 17, 1964]

§ 916.107 Changes in the representation of certain districts.

The representation or membership on the Nectarine Administrative Committee is changed to provide for:

(a) Five (5) members and their respective alternates shall be producers of nectarines in District 1;

(b) One (1) member and his alternate shall be producers of nectarines in District 2;

(c) One (1) member and his alternate shall be producers of nectarines in District 3;

(d) One (1) member and his alternate shall be producers of nectarines in District 4.

[29 FR 3419, Mar. 17, 1964]

§ 916.110 Exemptions.

(a) *Waivers.* A handler may handle nectarines without inspection and certification, as prescribed under § 916.55, if all the following conditions are met:

(1) The handler requests the Federal-State Inspection Service to provide inspection during its regular working hours at least 2 hours in advance of the time when inspection is needed. The request need not be in writing but it shall be confirmed immediately in writing on a waiver form to be supplied by the inspection service;

(2) The Federal-State Inspection Service advises the handler that it is not practicable to provide inspection at the time and place designated by the handler. This advice may be verbal but it shall be confirmed in writing by the Federal-State Inspection Service by execution of the waiver form on which the handler submitted his written request. A confirmed copy thereof shall be forwarded by the inspection service to the office of the Nectarine Administrative Committee.

(3) The Federal-State Inspection Service furnishes the handler with the number of the waiver which shall cover the nectarines on which inspection is requested;

(4) When instructed to do so, the handler plainly and conspicuously marks one end of each container with the letter "W" and the waiver number supplied by the Federal-State Inspection Service. The letter W and the number shall not be less than one-half inch in height.

(b) *Minimum quantities.* Notwithstanding any other provision of this section, nectarines may be handled without regard to the provisions of §§ 916.41, 916.52, 916.53, 916.55, and 916.60 under the following conditions:

(1) Such nectarines meet the grade requirements set forth in Article 30 of the Food and Agriculture Code of California.

(2) Such nectarines are for home use and not for resale.

(3) The net weight of such nectarines to any one person during any one day does not exceed 200 pounds.

(4) Such nectarines are handled by the person who produced them; and the handling takes place (i) on the premises where grown, (ii) at a packinghouse or retail stand nearby which is operated by said handler, or (iii) at a certified farmers market in compliance with section 1392 of the regulations of the California Department of Food and Agriculture: *Provided,* That the exemption for certified farmers markets shall not apply to nectarines sorted out by a handler unless the nectarines are packed in containers clearly and legibly marked to show that the nectarines contained therein are only to be sold at certified farmers markets, and the handler complies with regulations established under §§ 916.41, 916.52(a)(1), 916.55, and 916.60 except that nectarines may be handled to such markets if the nectarines fail to meet the U.S. No. 1 grade only on account of being soft and overripe.

[31 FR 7474, May 24, 1966, as amended at 41 FR 22071, June 1, 1976; 42 FR 23157, May 6, 1977; 47 FR 30452, July 14, 1982; 49 FR 28541, July 13, 1984]

§ 916.115 Lot stamping.

Except when loaded directly into railway cars or exempted under § 916.110, containers of nectarines shall be plainly stamped, prior to shipment, with a Federal-State Inspection Service lot stamp number, assigned by such Service, showing that such nectarines have been inspected in accordance with § 916.55.

[25 FR 239, Jan. 13, 1960. Redesignated at 26 FR 12751, Dec. 30, 1961]

§ 916.160 Reporting procedure.

(a) *Report of daily packout.* When requested by the Nectarine Administrative Committee, each shipper who ships nectarines shall furnish to the manager of the Nectarine Administrative Committee or its designee a report of the number of packages by container type, by variety and by district of

origin, which the shipper packed during the preceding day.

(b) *Recapitulation of shipments.* Each shipper of nectarines shall furnish to the manager of the Nectarine Administrative Committee not later than the 10th day of each month a recapitulation of his shipments of each variety completed during the preceding month. The recapitulation shall show: (1) The name of the shipper, (2) the shipping point, (3) the district of origin, (4) the variety, and (5) the number of packages, by size, for each container type.

[39 FR 27116, July 25, 1974]

NOTE: After January 1, 1979, "Budget of Expenses and Rate of Assessment" regulations (e.g. sections .200 through .299) and "Handling" regulations (e.g. sections .357 through .399) which are in effect for a year or less, will not be carried in the Code of Federal Regulations. For FEDERAL REGISTER citations affecting these regulations, see the "List of CFR Sections Affected" in this volume.

Subpart—Container and Pack Regulation

§ 916.350 Nectarine Regulation 8.

(a) No handler shall ship any package or container of any variety of nectarines except in accordance with the following terms and conditions:

(1) Such nectarines, when packed in any closed package or container, except master containers of consumer packages and individual consumer packages therein, shall conform to the requirements of standard pack: *Provided,* That nectarines in any container shall be fairly uniform in size.

(2) Each package or container of nectarines shall bear, on one outside end in plain sight and in plain letters, the name "nectarines" and except for consumer packages in master containers the name of the variety, if known or, when the variety is not known, the words "unknown variety."

(3) Each package or container of nectarines shall bear, on one outside end in plain sight and in plain letters, the following count and/or size description of the nectarines as applicable:

(i) The size of nectarines packed in molded forms (tray-packs) in No. 22D standard lug boxes, No. 22G standard lug boxes, cartons, No. 12B fruit (peach) boxes or flats and the size of wrapped nectarines packed in rows in No. 12B fruit (peach) boxes shall be indicated in accordance with the number of nectarines in each container, such as "80 count," "88 count," etc.

(ii) The size of nectarines in molded forms (tray-packs) in No. 22G standard lug boxes shall be indicated according to the number of such nectarines when packed in molded forms in the No. 22D standard lug box in accordance with the requirements of standard pack, such as "80 size," "88 size," etc, along with count requirements in paragraph (a)(3)(i) of this section.

(iii) The size of nectarines loose-filled or tight-filled in any container shall be indicated according to the number of such nectarines when packed in molded forms in the No. 22D standard lug box in accordance with the requirements of standard pack, such as "80 size," "88 size," etc.

(4) Each No. 22D standard lug box and No. 22G standard lug box of loose-filled nectarines shall bear on one outside end, in plain sight and in plain letters, the words "25 pounds net weight."

(5) Each No. 22E standard lug box of loose-filled nectarines shall bear on one outside end, in plain sight and in plain letters, the words "35 pounds net weight."

(6) Each bulk bin container of loose-filled nectarines shall contain not less than 400 pounds net weight, and bear on one outside panel, in plain sight and in plain letters, the following information:

(i) The name and address (including zip code) of the shipper.

(ii) The net weight.

(7) Each master container when filled with nectarines packed in consumer packages shall bear on one outside end in plain sight and in plain letters the following information:

(i) The number of individual consumer packages, the net weight of each consumer package, and the size description of the contents.

(ii) The name and address (including zip code) of the shipper.

(8) Each individual consumer package shall bear the name and address of the shipper and the net weight.

(b) As used herein, "standard pack" and "fairly uniform in size" shall have the same meanings as set forth in U.S. Standards for Grades of Nectarines (§§ 51.3145 to 51.3160) and all other terms shall have the same meaning as when used in the amended marketing agreement and order. "No. 12B standard fruit box" measures 2⅜ to 7⅛ x 11½ x 16⅛ inches, "No. 22D standard lug box" measures 2⅞ to 7⅛ x 13½ x 16⅛ inches, "No. 22E standard lug box" measures 8¾ x 13½ x 16⅛ inches, "No 22G standard lug box" measures 7⅜ to 7½ x 13¼ x 15⅞ inches. All dimensions are given in depth (inside dimension) by width by length (outside dimension).

[50 FR 39074, Sept. 27, 1985]

Subpart—Grade and Size Regulation

§ 916.356 Nectarine Regulation 14.

(a) No handler shall ship:

(1) Any package or container of any variety of nectarines unless such nectarines meet the requirements of U.S. No. 1 grade: *Provided,* That maturity shall be determined by the application of color standards by variety or such other tests as determined to be proper by the Federal or Federal-State Inspection Service; *Provided further,* That nectarines 2 inches in diameter or smaller, shall not have fairly light colored, fairly smooth scars which exceed the aggregate area of a circle ⅜ inch in diameter, and nectarines larger than 2 inches in diameter shall not have fairly light colored, fairly smooth scars which exceed an aggregate area of a circle ½ inch in diameter; *Provided further,* That an additional tolerance of 25 percent shall be permitted for fruit that is not well formed but not badly misshapen.

(2) Any package or container of Aurelio Grand, Desert Dawn, Mayfair, Maybelle, or Royal Delight variety nectarines unless:

(i) Such nectarines, when packed in molded forms (tray pack) in a No. 22D standard lug box, are of a size that will pack, in accordance with the requirements of a standard pack, not more than 108 nectarines in the lug box;

(ii) Such nectarines in any container when packed other than as specified in paragraph (a)(3) of this section are of a size that a 16-pound sample, representative of the nectarines in the package or container, contains not more than 98 nectarines.

(3) Any package or container of Apache, Armking, Early May, Early May Grand, Early Star, Gee Red, Grand Stan, June Glo, June Grand, May Grand, Red Delight, Red June, Spring Grand, Sunfre, or Zee Gold Variety of nectarines unless:

(i) Such nectarines, when packed in molded forms (tray pack) in a No. 22D standard lug box, are of a size that will pack, in accordance with the requirements of a standard pack, not more than 96 nectarines in the lug box; or

(ii) Such nectarines in any container when packed other than as specified in paragraph (a)(4) of this section are of a size that a 16-pound sample, representative of the nectarines in the package or container, contains not more than 90 nectarines.

(4) Any package or container of Ambrosia, Autumn Delight, Autumn Grand, Bob Grand, Clinton-Strawberry, Early Sun Grand, Fairlane, Fantasia, Firebrite, Flamekist, Flavortop, Flavortop I, Gold King, Granderli, Hi-Red, Independence, Kent Grand, Late Le Grand, Le Grand, Moon Grand, Niagara Grand, P-R Red, Red Diamond, Red Free, Red Grand, Regal Grand, Richards Grand, Royal Giant, Ruby Grand, September Grand, Tasty Free, Tom Grand, Larry's Grand, Son Red, Spring Red, Late Tina Red, Red Jim, Summer Beaut, Sparkling Red, Star Grand, Summer Grand, Sun Grand, Sherri Red or 20 G 836 variety of nectarines unless:

(i) Such nectarines, when packed in molded forms (tray pack) in a No. 22D standard lug box, are of a size that will pack, in accordance with the requirements of a standard pack, not more than 84 nectarines in the lug box; or

(ii) Such nectarines in any container when packed other than specified in paragraph (a)(4) of this section are of a size that a 16-pound sample, representative of the nectarines in the

package or container, contains not more than 75 nectarines.

(b) As used herein, "U.S. No. 1" and "standard pack" mean the same as defined in the United States Standards for Grades of Nectarines (7 CFR 51.3145 to 51.3160); "No. 22D standard lug box" means the same as defined in Section 1380.19(17) of the "Regulations of the California Department of Food and Agriculture."

[46 FR 37499, July 21, 1981, as amended at 47 FR 35752, Aug. 17, 1982; 48 FR 24654, June 2, 1983; 49 FR 17004, Apr. 23, 1984; 49 FR 22462, May 30, 1984; 49 FR 30056, July 26, 1984; 50 FR 12217, Mar. 28, 1985; 50 FR 27814, July 8, 1985]

PART 917—FRESH PEARS, PLUMS, AND PEACHES GROWN IN CALIFORNIA

Subpart—Order Regulating Handling

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AUTHORITY: Secs. 1-19, 48 Stat. 31, as amended; 7 U.S.C. 601-674.

Subpart—Order Regulating Handling

SOURCE: 41 FR 17528, Apr. 27, 1976, unless otherwise noted.

DEFINITIONS

§ 917.1 Secretary.

"Secretary" means the Secretary of Agriculture of the United States, or any officer or employee of the Department to whom authority has heretofore been delegated, or to whom authority may hereafter be delegated, to act in his stead.

§ 917.2 Act.

"Act" means Public Act No. 10, 73d Congress (May 12, 1933), as amended, and as reenacted and amended by the Agricultural Marketing Agreement Act of 1937, as amended (48 Stat. 31, as amended; 7 U.S.C. 601-674).

§ 917.3 Person.

"Person" means an individual, partnership, corporation, association, or any other business unit.

§ 917.4 Fruit.

"Fruit" means the edible product of the following three kinds of trees (a) all varieties of plums, (b) all varieties of peaches, and (c) all varieties of pears except Beurre Hardy, Beurre D'Anjou, Bosc, Winter Nelis, Doyenne du Comice, Beurre Easter, and Beurre Clairgeau.

§ 917.5 Grower.

"Grower" is synonymous with producer and means any person who produces fruit for market in fresh form, and who has a proprietary interest therein.

§ 917.6 Handle.

"Handle" and ship are synonymous and mean to sell, consign, deliver or transport fruit or to cause fruit to be sold, consigned, delivered or transported between the production area and any point outside thereof, or within the production area: *Provided*, That the term handle shall not include the sale of fruit on the tree, the transportation within the production area of fruit from the orchard where grown to a packing facility located within such area for preparation for market, or the delivery of such fruit to such packing facility for such preparation.

§ 917.7 Handler.

"Handler" is synonymous with shipper and means any person (except a common or contract carrier transporting fruit owned by another person) who handles fruit.

§ 917.8 Commercial plum handler.

"Commercial plum handler" means any person who produces less than 50% of the plums which he handles.

§ 917.9 Fiscal period.

"Fiscal period" is synonymous with fiscal year and means the 12-month period ending on the last day of February of each year, or such other period that may be approved by the

Secretary pursuant to recommendations by the committee.

§ 917.11 Production area.

"Production area" means the State of California.

§ 917.12 Container.

"Container" means a box, bag, crate, lug, basket, carton, package, or any other type of receptacle used in the packaging or handling of fruit.

§ 917.13 Pack.

"Pack" means the specific arrangement, size, weight, count, or grade of a quantity of fruit in a particular type and size of container or any combination thereof.

§ 917.14 District.

"District" means any of the following subdivisions of the State of California:

(a) "North Sacramento Valley District" includes and consists of Glenn County, Shasta County, Tehama County, Modoc County, Siskiyou County, Lassen County, Plumas County, and Colusa County.

(b) "Central Sacramento Valley District" includes and consists of Sutter County, Butte County, Yuba County, and Sierra County.

(c) "Sacramento River District" includes and consists of Sacramento County, that portion of Yolo County east of a straight line from the northwest corner of Sacramento County to the Northeast corner of Solano County, and that portion of Solano County east of a straight line from the northeast corner of Solano County to the town of Rio Vista.

(d) "El Dorado District" includes and consists of El Dorado County.

(e) "Placer-Colfax District" includes and consists of Nevada and Placer Counties.

(f) "Solano District" includes and consists of that portion of Yolo County not included in the Sacramento River District, and that portion of Solano County not included in the Sacramento River District.

(g) "Contra Costa District" includes and consists of Contra Costa County.

(h) "Santa Clara District" includes and consists of Alameda County, Monterey County, Santa Clara County, San Mateo County, Santa Cruz County, and San Benito County.

(i) "Lake District" includes and consists of Lake County.

(j) "Mendocino District" includes and consists of Mendocino County, Humboldt County, Trinity County, and Del Norte County.

(k) "South Coast District" includes and consists of San Luis Obispo County, Santa Barbara County, and Ventura County.

(l) "Stockton District" includes and consists of San Joaquin County, Amador County, Calaveras County, and Alpine County.

(m) "Stanislaus District" includes and consists of Merced County, Stanislaus County, Tuolumne County, and Mariposa County.

(n) "Fresno District" includes and consists of Madera County, Fresno County, Mono County, Kings County, and that portion of Tulare County north of the 4th Standard Parallel south of the Mount Diablo Base Line of the General Land Office.

(o) "Tulare District" includes and consists of that portion of Tulare County not included in Fresno District.

(p) "Kern District" includes and consists of that portion of Kern County west of the Tehachapi Mountains.

(q) "Tehachapi District" includes and consists of that portion of Kern County not included in Kern District, and Inyo County.

(r) "Southern California District" includes and consists of San Bernardino County, Orange County, San Diego County, Imperial County, Riverside County, and Los Angeles County.

(s) "North Bay District" includes and consists of Sonoma County, Napa County, and Marin County.

§ 917.15 Representation area.

"Representation area" means any one of the districts or groups of districts which are designated for nominating members and alternate members to the commodity committees under §§ 917.21 through 917.23 or as changed pursuant to § 917.35(g).

ADMINISTRATIVE BODIES

§ 917.16 Designation of Control Committee.

A Control Committee is hereby established consisting of 12 shipper members and 13 commodity committee members, and the members shall be selected in accordance with the provisions of § 917.17 through § 917.19. The members shall be selected annually for a term ending on the last day of February, and said members shall serve until their respective successors are selected and have qualified.

§ 917.17 Nomination of shipper members of the Control Committee.

Nominations for the 12 members of the Control Committee to represent shippers shall be made in the following manner:

(a) By February 1 of each year the Control Committee shall announce a time and place for a meeting of all shippers of fruit and shall conduct the election of nominees at such meeting. At said election meeting the shippers present shall select a nominee for each of the shipper member positions on the Control Committee. Each shipper shall cast only one vote.

(b) No shipper shall be entitled to participate in the nomination of members of the Control Committee, or be eligible for membership on such committee, if such shipper has failed to pay the assessments, due to be paid by him pursuant to the provisions of § 917.37.

§ 917.18 Nomination of commodity committee members of the Control Committee.

Nominations for the 13 members of the Control Committee to represent the commodity committees shall be made in the following manner:

(a) A nomination for one member shall be made by each commodity committee selected pursuant to § 917.25. Nominations for the remaining members shall be made by the respective commodity committees as provided in this section. The number of remaining members which each respective commodity committee shall be entitled to nominate shall be based upon the proportion that the previous three fiscal periods' shipments of the respective fruit is of the total shipments of all fruit to which this part is applicable during such periods. In the event provisions of this part are terminated as to any one fruit, nominations of members to the Control Committee shall be composed of representatives of the remaining two fruits. The apportionment shall be determined as aforesaid. In the event provisions of this part are terminated as to any two fruits, the members of the commodity committee of the remaining fruit shall have all of the powers, duties, and functions given to the Control Committee under this part and sections of this part pertaining to the designation of the Control Committee shall be terminated.

(b) A person nominated by any commodity committee for membership on the Control Committee shall be an individual person who is a member or alternate member of the commodity committee which nominates him. Each member of each commodity committee shall have only one vote in the selection of nominees for membership on the Control Committee.

§ 917.19 Selection of members of the Control Committee.

From the nominations made pursuant to § 917.17, or from other persons, the Secretary shall select the shipper members of the Control Committee. From the nominations made pursuant to § 917.18, or from other persons, the Secretary shall select the commodity committee members of the Control Committee. Any person selected as member of the Control Committee shall qualify by filing with the Secretary a written acceptance of the appointment.

§ 917.20 Designation of members of commodity committees.

There are hereby established a Pear Commodity Committee and a Peach Commodity Committee each consisting of 13 members and a Plum Commodity Committee consisting of 12 members. Each commodity committee may be increased by one public member nominated by the respective commodity committee and selected by

the Secretary. The members of each said committees shall be selected biennially for a term ending on the last day of February of odd numbered years, and such members shall serve until their respective successors are selected and have qualified. The members of each commodity committee shall be selected in accordance with the provisions of § 917.25.

§ 917.21 Nomination of Pear Commodity Committee members.

Nominations for membership on the Pear Commodity Committee shall be made by the growers of pears in the respective representation areas as follows:

(a) North Sacramento Valley District and the Central Sacramento Valley District one nominee.

(b) Sacramento River District, Stockton District, Stanislaus District, Contra Costa District, Santa Clara District, and Solano District four nominees.

(c) Placer-Colfax District one nominee.

(d) Lake District four nominees.

(e) Mendocino District and the North Bay District one nominee.

(f) El Dorado District one nominee.

(g) All of the production area not included in paragraphs (a) through (f) of this section one nominee.

§ 917.22 Nomination of Peach Commodity Committee members.

Nominations for membership on the Peach Commodity Committee shall be made by growers of peaches in the respective representation areas, as follows:

(a) South Coast District and Southern California District one nominee.

(b) Tehachapi District and Kern District one nominee.

(c) Tulare District one nominee.

(d) Fresno District eight nominees.

(e) Stanislaus District and Stockton District one nominee.

(f) All of the production area not included in paragraphs (a) through (e) of this section one nominee.

§ 917.23 Nomination of Plum Commodity Committee members.

Nominations for membership on the Plum Commodity Committee shall be made by the growers of plums in the respective representation areas as follows:

(a) Kern District, Tehachapi District, South Coast District, and Southern California District one nominee.

(b) Tulare District two nominees.

(c) Fresno District six nominees.

(d) Placer-Colfax District one nominee.

(e) North Sacramento Valley District and Central Sacramento Valley District one nominee.

(f) All of the production area not included in paragraphs (a) through (e) of this section one nominee.

§ 917.24 Procedure for nominating members of various commodity committees.

(a) The Control Committee shall hold or cause to be held not later than February 15 of each odd numbered year a meeting or meetings of the growers of the fruits in each representation area set forth in §§ 917.21, 917.22, and 917.23 for the purpose of designating nominees of the commodity committees. These meetings shall be supervised by the Control Committee, which shall prescribe such procedure as shall be reasonable and fair to all persons concerned.

(b) With respect to each commodity committee only growers of the particular fruit who are present at such nomination meetings or represented at such meetings by duly authorized employees may participate in the nomination and election of nominees for commodity committee members. Each such grower, including employees of such grower, shall be entitled to cast but one vote for each position to be filled for the representation area in which he produces such fruit.

(c) A particular grower, including employees of such growers, shall be eligible for membership as principal or alternate to fill only one position on a commodity committee. A grower nominated for membership on the Pear Commodity Committee must have produced at least 51 percent of the pears shipped by him during the previous fiscal period, or he must represent an organization which produced at least 51 percent of the pears shipped by it during such period. A grower nominat-

ed for membership on the Plum Commodity Committee may be a producer who has a proprietary interest in or is an employee of a commercial plum handler: *Provided*, That at least one such nominee from each representation area shall be a producer who does not have a proprietary interest in or is not an employee of a commercial plum handler.

§ 917.25 Selection of members of various commodity committees.

The Secretary shall select the members of each commodity committee from nominations made by growers, as provided in §§ 917.21 through 917.24, or from among other eligible persons. Any person selected as a member of a commodity committee shall qualify by filing with the Secretary a written acceptance of the appointment.

§ 917.26 Failure to nominate.

If nominations are not made within the time and in the manner prescribed in §§ 917.21 through 917.24, the Secretary may, without regard to nominations, select the members and alternate members of the commodity committees on the basis of the representation provided in §§ 917.21 through 917.23. In the event nominations are not made for membership on the Control Committee, pursuant to the provisions of §§ 917.17 and 917.18, by May 1 of each year, the Secretary may select such members without waiting for nominees to be designated.

§ 917.27 Alternates.

There shall be an alternate for each member of the Control Committee, and an alternate for each member of each commodity committee. Each such alternate shall possess the same qualifications, shall be nominated and selected in the same manner and shall hold office for the same term, as the member for whom he is alternate. An alternate shall, in the event of such member's absence at a meeting of the committee, act in the place and stead of such member; and, in the event of such member's removal, resignation, disqualification, or death, the alternate for such member shall, until a successor for the unexpired term of said member has been selected, act in the place and stead of said member. In the event both a member and his alternate are unable to attend a meeting the member or the committee members present may designate any other alternative to serve in such member's place and stead provided such action is necessary to secure a quorum.

§ 917.28 Procedure for filling vacancies on committees.

To fill any vacancy on the Control Committee or on any of the commodity committees occasioned by the failure of any person selected as a member or as an alternate member to qualify, or in the event of the death, removal, resignation, or disqualification of any member or alternate member, a successor for the unexpired term of such member or alternate shall be nominated and selected in the manner specified in §§ 917.17 through 917.19 and §§ 917.21 through 917.25. If the names of nominees to fill any such vacancy are not made available to the Secretary within a reasonable time after such vacancy occurs, the Secretary may fill such vacancy without regard to nominations on the basis of representation provided for in §§ 917.16 and 917.21 through 917.23.

§ 917.29 Organization of committees.

(a) A majority of all of the members of the Control Committee shall constitute a quorum, and any action of the Control Committee shall require the concurrence of the majority of all members present at the meeting.

(b) A quorum of the Pear Commodity Committee and of the Peach Commodity Committee shall each consist of nine members and a quorum of the Plum Commodity Committee shall consist of eight members.

(c) The Control Committee and each commodity committee shall give to the Secretary the same notice of each meeting that is given to the members of the respective committee.

(d) The Control Committee or any commodity committee may, upon due notice to all of the members of the respective committee, vote by letter, telegraph, or telephone: *Provided*, That any member voting by telephone

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shall promptly thereafter confirm in writing his vote so cast.

§ 917.30 Removal and disapproval.

The members of the Control Committee, including their respective successors and alternates, and the members of each commodity committee, including their respective successors and alternates, and any agent or employee appointed or employed by the Control Committee and the members of any other committee established pursuant to the provisions of this subpart shall be subject to removal or suspension at any time by the Secretary. Each regulation, decision, determination, or other act of the Control Committee, or any commodity committee, or any other committee established pursuant to the provisions of this subpart, shall be subject to the continuing right of the Secretary to disapprove of the same at any time; and, upon such disapproval, each such regulation, decision, determination, or other act, shall be deemed null and void except as to acts done in reliance thereon or in compliance therewith prior to such disapproval by the Secretary.

§ 917.31 Compensation and expenses.

All committee members shall serve without compensation, but said members, and their respective alternates, shall be reimbursed for expenses necessarily incurred in the performance of their duties. At its discretion any committee may request the attendance of one or more alternates at any or all meetings, notwithstanding the expected or actual presence of the respective members, and may pay expenses as aforesaid.

§ 917.32 Funds and other property.

(a) All funds received by the Control Committee, pursuant to the provisions of this part, shall be used solely for the purpose specified in this part; and the Secretary may require the Control Committee and its members to account for all receipts and disbursements.

(b) Upon the resignation, removal, or expiration of the term of any member or employee of the Control Committee, or of any member of any commodity committee, all books, records, funds, and other property in his possession belonging to the Control Committee or any commodity committee shall be delivered to the Control Committee or to his successor in office; and such assignments and other instruments shall be executed as may be necessary to vest in the Control Committee full title to all the books, records, funds, and other property in the possession or under the control of such member or employee, pursuant to the provisions of this part.

(c) The Control Committee may, with the approval of the Secretary, maintain in its own name, or in the name of its members, a suit against any shipper for the collection of such shipper's pro rata share of expenses, pursuant to the provisions of this part.

§ 917.33 Powers of Control Committee.

The Control Committee shall have the following powers:

(a) To administer, as specifically provided in this part, the terms and provisions of this part.

(b) To make administrative rules and regulations in accordance with and to effectuate the terms and provisions of this part.

(c) To receive, investigate, and report to the Secretary complaints of violations of the provisions of this part.

(d) To recommend to the Secretary amendments to this part.

§ 917.34 Duties of Control Committee.

The Control Committee shall have the following duties:

(a) To act as intermediary between the Secretary and any grower or shippers.

(b) To keep minute books and records which will clearly reflect all of the acts and transactions of said Control Committee; and such minute books and records shall be subject at any time to examination by the Secretary or by such person as may be designated by the Secretary.

(c) To investigate, from time to time, and assemble data on the growing, shipping, and marketing conditions respecting fruit, as defined in § 917.4; to engage in such research and service activities in connection with the han-

dling of such fruit as may be approved, from time to time, by the Secretary; and to furnish to the Secretary such available information as may be requested.

(d) To appoint such employees, agents, and representatives as it may deem necessary, and to determine the compensation and define the duties of each.

(e) To develop and provide the commodity committees data on shared expenses to facilitate equitable apportionment of such expenses in the development of budgets.

(f) To confer with representatives of shippers and growers of fruit produced in other states and areas with respect to the formulation or operation of marketing agreements providing for the regulation of shipments among the several states and areas in the United States in which such fruit is grown.

(g) With the approval of the Secretary establish procedures for the selection and appointment of a public member and alternate to each of the commodity committees.

(h) To establish and define the duties of additional committees or subcommittees to assist in the performance of any of the duties and functions of the Control Committee.

(i) To defend all legal proceedings against any committee members (individually or as members) or any officers or employees of such committees arising out of any act or omission made in good faith pursuant to the provisions of this part.

(j) To cause the books of the Control Committee to be audited by a competent accountant at least once each fiscal period and at such other time or times as the Control Committee may deem necessary or as the Secretary may request. Such audit shall indicate whether the funds have been received and expended in accordance with the provisions of this part.

(k) To appoint nomination committees if it deems proper for any or each nomination meeting held pursuant to §§ 917.21 through 917.23. Such nomination committees would canvas prospective members and alternate members to the commodity committees to determine their eligibility and willingness to serve and present a slate of nominees to the meeting or meetings. The presentation of nominees by the nominating committee at these meetings shall not exclude the right of any grower to nominate any eligible person at such meeting.

§ 917.35 Powers and duties of each commodity committee.

Each commodity committee shall have the following powers and duties:

(a) With regard to the respective fruit for which it was established, to establish production research and marketing research and development projects as authorized under § 917.39, to recommend to the Secretary regulation of shipments pursuant to the provisions of this part, and to possess such other powers and exercise such other duties as will properly effectuate the purpose of this part: *Provided, however,* That the Peach and Pear Commodity Committee shall each approve actions under § 917.39 and make said recommendations pursuant to §§ 917.40 through 917.43 only upon the affirmative vote of not less than nine members of each said committee: *Provided further,* That the Plum Commodity Committee shall approve such actions pursuant to § 917.39 or make said recommendations pursuant to §§ 917.40 through 917.43 only upon the affirmative vote of not less than eight members of said committee.

(b) To make such rules and regulations with respect to fruit for which it was established as may be necessary to effectuate the terms and provisions of this part.

(c) To forward to the Control Committee and to the Secretary a record of the minutes of each meeting of the commodity committee.

(d) To establish such other committees to aid the commodity committee in the performance of its duties under this part as may be deemed advisable.

(e) Each season prior to any recommendation to the Secretary for a regulation of shipments pursuant to §§ 917.40 through 917.43 to determine the marketing policy to be followed for the respective commodity during the ensuing fiscal period and to submit such policy to the Secretary, said

policy report to contain, among other provisions, information relative to the estimated total production and shipments of the fruit by districts, information as to the expected general quality and size of fruit, possible or expected demand conditions of different market outlets, supplies of competitive commodities, such analysis of the foregoing factors and conditions as the committee deems appropriate, and the type of regulations of shipments expected to be recommended for the respective fruit.

(f) To submit as soon as practicable after the beginning of each fiscal year to the Secretary, for his approval, a budget of its expenses for such fiscal period, including its proportional share of the expenses of the Control Committee and an explanation of the items therein, and a recommendation as to the rate of assessment for the respective fruit for which the commodity committee was established.

(g) With the approval of the Secretary, to redefine the Districts into which the State of California has been divided under § 917.14 or change the representation of any representation area affecting the respective commodity committee: *Provided, however,* That if any such changes are made, representation on any such committee from the various representation areas shall be based, so far as practicable, upon the proportionate quantity of the respective fruit shipped from the respective representation area during the preceding three fiscal periods: *Provided further,* That the commodity committees shall follow the principle, so far as practicable, of assigning a member position on the commodity committees to any representation area from which five percent of regulated shipments have originated during such periods.

Expenses and Assessments

§ 917.36 Expenses.

Each commodity committee is authorized to incur such expenses as the Secretary finds are reasonable and are likely to be incurred by the said commodity committee during each fiscal period for the maintenance and functioning of such committee, including its proportionate share of the expenses of the Control Committee; and for such research and service activities relating to handling of the fruit for which the commodity committee was established as the Secretary may determine to be appropriate. The funds to cover such expenses shall be acquired by the levying of assessments as provided in § 917.37.

§ 917.37 Assessments.

(a) As his pro rata share of the expenses which the Secretary finds are reasonable and are likely to be incurred by the commodity committees during a fiscal period, each handler shall pay to the Control Committee, upon demand, assessments on all fruit handled by him. The payment of assessments for the maintenance and functioning of the committees may be required under this part throughout the period it is in effect irrespective of whether particular provisions thereof are suspended or become inoperative.

(b) The Secretary shall fix the respective rate of assessment which handlers shall pay with respect to each fruit during each fiscal period in an amount designed to secure sufficient funds to cover the respective expenses which may be incurred during such period. At any time during or after the fiscal period, the Secretary may increase the rates of assessment in order to secure funds to cover any later findings by the Secretary relative to such expenses, and such increase shall apply to all fruit shipped during the fiscal period.

(c) In order to provide funds to carry out the functions of the commodity committee prior to commencement of shipments in any season, shippers may make advance payments of assessments, which advance payments shall be credited to such shippers and the assessments of such shippers shall be adjusted so that such assessments are based upon the quantity of fruit shipped by such shippers during such season. Any shipper who ships fruit for the account of a grower may deduct, from the account of sale covering such shipment or shipments, the amount of assessments levied on said

fruit shipped for the account of such grower.

§ 917.38 Accounting.

If, at the end of a fiscal period the assessments collected are in excess of expenses incurred, each commodity committee, with the approval of the Secretary, may carry over such excess into subsequent fiscal periods as a reserve: *Provided*, That funds already in the reserve do not exceed approximately one fiscal period's expenses. Such reserve funds may be used (1) to cover any expenses authorized by this part and (2) to cover necessary expenses of liquidation in the event of termination of this part. If any such excess is not retained in a reserve, each handler entitled to a proportionate refund shall be credited with such refund against the operations of the following fiscal period or be paid such refund. Upon termination of this part, any funds not required to defray the necessary expenses of liquidation shall be disposed of in such manner as the Secretary may determine to be appropriate: *Provided*, That, to the extent practical, such funds shall be returned pro rata to the persons from whom such funds were collected.

Research

§ 917.39 Production research, market research and development.

The committees, with the approval of the Secretary, may establish or provide for the establishment of production research, marketing research, and development projects designed to assist, improve, or promote the marketing, distribution, and consumption or efficient production of fruit. Such projects may provide for any form of marketing promotion including paid advertising. The expenses of such projects shall be paid from funds collected pursuant to § 917.37.

Regulations

§ 917.40 Recommendations for regulations.

(a) Whenever a commodity committee deems it advisable to regulate the handling of any variety or varieties of fruit in the manner provided in § 917.41, it shall so recommend to the Secretary.

(b) In arriving at its recommendations for regulation pursuant to paragraph (a) of this section, the commodity committee shall give consideration to current information with respect to the factors affecting the supply and demand for such fruit during the period or periods when it is proposed that such regulation should be made effective. With each such recommendation for regulation, the commodity committee shall submit to the Secretary the data and information on which such recommendation is predicated and such other available information as the Secretary may request.

§ 917.41 Issuance of regulations.

(a) The Secretary shall regulate, in the manner specified in this section, the handling of any variety or varieties of fruit whenever he finds, from the recommendations and information submitted by the commodity committee, or from other available information, that such regulations will tend to effectuate the declared policy of the act. Such regulations may:

(1) Limit, during any period or periods, the total quantity of any grade, size, quality, maturity, or pack, or any combination thereof, of any variety or varieties of fruit;

(2) Limit the shipment of any variety or varieties of fruit by establishing, in terms of grades, sizes, or both, minimum standards of quality and maturity during any period when season average prices are expected to exceed the parity level;

(3) Fix the size, capacity, weight, dimensions, markings, or pack of the container, or containers, which may be used in the packaging or handling of any fruit.

(b) The commodity committee shall be informed immediately of any such regulation issued by the Secretary, and the commodity committee shall promptly give notice thereof to handlers.

§ 917.42 Modification, suspension, or termination of regulations.

(a) In the event the commodity committee at any time finds that, by

reason of changed conditions, any regulations issued pursuant to § 917.41 should be modified, suspended, or terminated, it shall so recommend to the Secretary.

(b) Whenever the Secretary finds, from the recommendations and information submitted by the commodity committee or from other available information, that a regulation should be modified, suspended, or terminated with respect to any or all shipments of fruit in order to effectuate the declared policy of the act, he shall modify, suspend, or terminate such regulation. If the Secretary finds that a regulation obstructs or does not tend to effectuate the declared policy of the act, he shall suspend or terminate such regulation. On the same basis and in like manner the Secretary may terminate any such modification or suspension.

§ 917.43 Special purpose shipments.

(a) Except as otherwise provided in this section, any person may, without regard to the provisions of §§ 917.37, 917.41, and 917.42, and the regulations issued thereunder, handle fruit (1) for consumption by charitable institutions; (2) for distribution by relief agencies; or (3) for commercial processing into products.

(b) Upon the basis of recommendations and information submitted by the commodity committee, or from other available information, the Secretary may relieve from any or all requirements, under or established pursuant to § 917.41, § 917.42, § 917.45, or § 917.37, the handling of fruit; (1) To designated market areas outside the continental United States; (2) for such specified purposes (including shipments to facilitate the conduct of marketing research and development projects established pursuant to § 917.39); or (3) in such minimum quantities or types of shipments, as may be prescribed.

(c) The commodity committee shall, with the approval of the Secretary, prescribe such rules, regulations, and safeguards as it may deem necessary to prevent fruit handled under the provisions of this section from entering the channels of trade for other than the specified purposes authorized by this section. Such rules, regulations, and safeguards may include the requirements that handlers shall file applications and receive approval from the commodity committee for authorization to handle fruit pursuant to this section, and that such applications be accompanied by a certification by the intended purchaser or receiver that the fruit will not be used for any purpose not authorized by this section.

§ 917.45 Inspection and certification.

(a) Whenever the handling of any variety of a particular fruit is regulated pursuant to § 917.41 or § 917.42, each handler who handles such fruit shall, prior thereto, cause such fruit to be inspected by the Federal or Federal-State Inspection Service: *Provided,* That inspection and certification shall not be required if such fruit has previously been so inspected and certified. Promptly after inspection and certification, each such handler shall submit, or cause to be submitted, to the commodity committee a copy of the certificate of inspection issued with respect to such fruit. The commodity committees may, with the approval of the Secretary, prescribe rules and regulations waiving the inspection requirements of this section where it is determined that inspection is not available: *Provided,* That all shipments made under such waiver shall comply with all regulations in effect.

(b) The Control Committee may enter into an agreement with the Federal and Federal-State Inspection Services with respect to the costs of the inspection required by paragraph (a) of this section, for any or all fruits, and may collect from handlers their respective pro rata shares of such costs.

Reports

§ 917.50 Reports.

(a) Each handler shall furnish to the Manager of the Control Committee, at such times and for such periods as the Control Committee or the commodity committees may designate, certified reports covering, to the extent necessary for the committees to perform

their functions, each shipment of fruits as follows:

(1) The name of the shipper and the shipping point;

(2) The car or truck license number (or name of the trucker), and identification of the carrier;

(3) The date and time of departure;

(4) The number and type of containers in the shipment;

(5) The quantities shipped, showing separately the variety, grade, and size of the fruit;

(6) The destination;

(7) Identification of the inspection certificate or waiver pursuant to which the fruit was handled;

(8) The price per package at which sold, including specific and detailed information relative to all discounts, allowances, rebates, or other adjustments thereof.

(b) Upon request of any committee, made with the approval of the Secretary, each handler shall furnish to the Manager of the Control Committee, in such manner and at such times as it may prescribe, such other information as may be necessary to enable the committee to perform its duties under this part.

(c) Each handler shall maintain for at least two succeeding fiscal years, such records of the fruits received and disposed of by him as may be necessary to verify the reports he submits to the committee pursuant to this section.

(d) All reports and records submitted by handlers pursuant to the provisions of this section shall be received by, and at all times be in custody of, one or more designated employees of the Control Committee. No such employee shall disclose to any person, other than the Secretary upon request therefor, data or information obtained or extracted from such reports and records which might affect the trade position, financial condition, or business operation of the particular handler from whom received: *Provided,* That such data and information may be combined, and made available to any person, in the form of general reports in which the identities of the individual handlers furnishing the information are not disclosed and may be revealed to any extent necessary to effect compliance with the provisions of this part and the regulations issued thereunder.

Miscellaneous Provisions

§ 917.60 Effective time.

The provisions of this part and of any amendment thereto, shall become effective at such time as the Secretary may declare above his signature and shall continue in force until terminated in one of the ways specified in § 917.61.

§ 917.61 Termination.

(a) The Secretary may at any time terminate the provisions of this part by giving at least one day's notice by means of a press release or in any other manner in which he may determine.

(b) The Secretary shall terminate or suspend the operation of any and all of the provisions of this part whenever he finds that such provisions do not tend to effectuate the declared policy of the act.

(c) The Secretary shall terminate the provisions of this part or the applicability of the provisions of this part as to a particular fruit whenever he finds by referendum or otherwise that such termination is favored by a majority of the growers of the fruit: *Provided,* That such majority has during the current fiscal period produced more than 50 percent of the volume of the fruit which was produced within the production area for shipment in fresh form. Such termination shall become effective on the first day of March subsequent to the announcement thereof by the Secretary.

(d) The Control Committee shall consider all petitions from growers submitted to it for termination of this part provided such petitions are received by the Control Committee prior to October 1 of the then current fiscal period. Upon recommendation of the Control Committee, received not later than December 1 of the then current fiscal period, the Secretary shall conduct a referendum among the growers of the particular kind of fruit prior to February 15 of such fiscal period to ascertain whether continuance of this part is favored by producers.

(e) The Secretary shall conduct a referendum within the period beginning December 1, 1974, and ending February 15, 1975, to ascertain whether continuance of this part as to any fruit included in this part is favored by the growers. The Secretary shall conduct such a referendum within the same period of every fourth fiscal period thereafter.

(f) The provisions of this part shall, in any event, terminate whenever the provisions of the act authorizing them cease to be in effect.

§ 917.62 Proceedings after termination.

(a) Upon the termination of the provisions of this part pertaining to any fruit or fruits, the Control Committee then functioning shall for the purpose of liquidating the affairs of the Control Committee with respect to such fruit continue as trustee of all the funds and property then in its possession, or under its control, including claims for any funds unpaid or property not delivered at the time of such termination.

(b) The said trustees shall (1) continue in such capacity until discharged by the Secretary; (2) from time to time account for all receipts and disbursements and deliver all property on hand, together with all books and records of the committee and of the trustees, to such persons as the Secretary may direct; and (3) upon the request of the Secretary, execute such assignments or other instruments necessary or appropriate to vest in such person, full title and right to all funds, property, and claims vested in the Control Committee or the trustees pursuant thereto.

(c) Any person to whom funds, property, or claims have been transferred or delivered, pursuant to this section, shall be subject to the same obligation imposed upon the Control Committee and upon the trustees.

§ 917.63 Effect of termination or amendment.

Unless otherwise expressly provided by the Secretary, the termination of this subpart or of any regulation issued pursuant to this subpart, or the issuance of any amendment to either thereof, shall not (a) affect or waive any right, duty, obligation, or liability which shall have arisen or which may thereafter arise in connection with any provision of this subpart or any regulation issued under this subpart, or (b) release or extinguish any violation of this subpart or of any regulation issued under this subpart, or (c) affect or impair any rights or remedies of the Secretary or of any other person with respect to any such violation.

§ 917.64 Compliance.

Each shipper shall comply with all regulations. No shipper shall ship fruit in violation of the provisions of this part or in violation of any regulation issued by the Secretary pursuant to the provisions of this part.

§ 917.65 Duration of immunities.

The benefits, privileges, and immunities conferred by virtue of the provisions of this subpart shall cease upon its termination except with respect to acts done under and during the time the provisions of this part are in force and effect.

§ 917.66 Agents.

The Secretary may by a designation in writing name any person, including any officer or employee of the Government or any agency or Division in the United States Department of Agriculture, to act as his agent or representative in connection with any of the provisions of this part.

§ 917.67 Derogation.

Nothing contained in this part is or shall be construed to be in derogation or in modification of the rights of the Secretary or of the United States to exercise any powers granted by the act or otherwise, and in accordance with such powers to act in the premises whenever such action is deemed advisable.

§ 917.68 Liability of committee members.

No members of the Control Committee, any commodity committee, or other committee, or any subcommittee, or any employee of the Control Committee shall be held personally responsible, either individually or jointly

with others, in any way whatsoever, to any shipper or any other person for errors in judgment, mistakes, or other acts, either of commission or omission, as such member or employee, except for acts of dishonesty.

§ 917.69 Separability.

If any provision of this part is declared invalid or the applicability thereof to any person, circumstance, thing, or any particular kind of fruit is held invalid, the validity of the remainder of this part or the applicability thereof to any other person, circumstance, thing, or kind of fruit shall not be affected thereby.

Subpart—Rules and Regulations

SOURCE: 16 FR 12776, Dec. 20, 1951, unless otherwise noted. Redesignated at 26 FR 12751, Dec. 30, 1961.

DEFINITIONS

§ 917.100 Order.

"Order" means Marketing Order No. 917, as amended (this Part 917), regulating the handling of fresh pears, plums, and peaches grown in the State of California.

[31 FR 7476, May 5, 1966]

§ 917.101 Marketing agreement.

"Marketing agreement" means Marketing Agreement No. 85 as amended.

§ 917.103 Terms.

All other terms used in this subpart shall have the same meaning as when used in the marketing agreement and order.

[18 FR 712, Feb. 4, 1953. Redesignated at 26 FR 12751, Dec. 30, 1961]

GENERAL

§ 917.110 Communications.

Unless otherwise prescribed in this subpart, or in the marketing agreement and order, or required by the Control Committee or a particular commodity committee, all reports, applications, submittals, requests, and communications in connection with the marketing agreement and order shall be addressed as follows:

Control Committee, California Tree Fruit Agreement, 701 Fulton Avenue, Sacramento, Calif. 95825.

[31 FR 7476, May 24, 1966]

ADMINISTRATIVE BODIES

§ 917.115 Nomination of shipper members for the Control Committee.

(a) All shippers who, prior to February 1 of the then current year, have not advised the manager of the Control Committee in writing of their participation in the formation of an elective body shall be notified promptly by the manager after that date, by mail, of the time and place for a meeting of such shippers to elect nominees for shipper membership on the Control Committee.

(b) The chairman of the then existing Control Committee shall schedule a meeting of shippers in the month of February of the then current year, for the purpose of making nominations to the shipper membership of the Control Committee; and such chairman is authorized to appoint a member of the Control Committee to act as chairman of the meeting and to conduct the election.

§ 917.116 Changes in nomination of Plum Commodity Committee members.

Nominations for membership on the Plum Commodity Committee shall be made by the growers of plums in the respective representation areas as follows:

(a) Kern District, Tehachapi District, South Coast District, and Southern California District one nominee.

(b) Tulare District two nominees.

(c) Fresno District seven nominees.

(d) Placer-Colfax District, North Sacramento Valley District, and Central Sacramento Valley District one nominee.

(e) All of the production area not included in the Kern District, Tehachapi District, South Coast District, Southern California District, Tulare District, Fresno District, Placer-Colfax District, North Sacramento Valley District, and Central Sacramento Valley District one nominee.

[42 FR 3625, Jan. 19, 1977]

§ 917.119 Procedure for nominating members for various Commodity Committees; meetings.

(a) The manager of the then existing Control Committee shall arrange for, and publicize, meetings of growers to nominate members for the different commodity committees, and each such meeting shall be attended by one or more employees of the Control Committee. Members of the Agricultural Extension Service of the University of California may be authorized by the manager to assist in calling such meetings and advise growers, on their respective mailing lists, of such meetings.

(b) Growers assembled at any such meetings may select a chairman and secretary, but in the event none of the aforesaid employees of the Control Committee is selected as secretary of the meeting, one such employee shall, nevertheless, record all nominations made.

(c) The nominations at any meeting shall be conducted according to Robert's rules of order. However, voting may be by secret ballot or by acclamation in accordance with the desire of the majority of the growers attending the meeting.

(d) No individual, whether representing a corporation or otherwise, may cast more than one vote for each nominee to be selected at the meeting where such individual is eligible to participate in the selection of nominees for members and alternate members of the Commodity Committees.

[16 FR 12776, Dec. 20, 1951, as amended at 24 FR 470, Jan. 21, 1959. Redesignated at 26 FR 12751, Dec. 30, 1961]

§ 917.121 Changes in nomination of Pear Commodity Committee members.

Nominations for membership on the Pear Commodity Committee shall be made by the growers of pears in the respective representation areas as follows:

(a) North Sacramento Valley District and the Central Sacramento Valley District one nominee.

(b) Sacramento River District, Stockton District, Stanislaus District, Contra Costa District, Santa Clara District and Solano District, three nominees.

(c) Lake District, six nominees.

(d) Mendocino District and North Bay District, two nominees.

(e) Placer-Colfax District and El Dorado District, and all of the production area not incleded in paragarphs a through d of this section, one nominee.

(f) All of the production area not included in paragraphs (a) through (e) of this section, one nominee.

[40 FR 4012, Jan. 27, 1975, as amended at 48 FR 15120, Apr. 7, 1983; 50 FR 40961, Oct. 8, 1985]

§ 917.122 Qualification requirements and nomination procedure for public members of Commodity Committees.

(a) Public members shall not have a financial interest in or be associated with production, processing, financing, or marketing (except as consumers) of the commodities regulated under this part.

(b) Public members should be able to devote sufficient time and express a willingness to attend committee activities regularly, and to familiarize themselves with the background and economics of the industry.

(c) Public members must be residents of California.

(d) Public members should be nominated by each Commodity Committee and should serve a two-year term which coincides with the term of office of grower members of Commodity Committees.

[42 FR 3625, Jan. 19, 1977, as amended at 43 FR 58355, Dec. 14, 1978]

Regulation by Grades, Sizes, and Minimum Standards of Quality and Maturity

§ 917.140 Package ratio.

The quantity of plums packed in 3 California peach boxes (including other packages and containers of comparable capacity) shall be deemed to be the equivalent of the quantity of plums packed in 2 standard 4-basket crates.

§ 917.143 Exemptions.

(a) *Waivers.* A handler may handle fruit without inspection and certifica-

tion, as prescribed under § 917.45, if all the following conditions are met:

(1) The handler requests the Federal-State Inspection Service to provide inspection during its regular working hours at least two hours in advance of the time when inspection is needed. The request need not be in writing but it shall be confirmed immediately in writing on a waiver form supplied by the inspection service;

(2) The Federal-State Inspection Service advises the handler that it is not practicable to provide inspection at the time and place designated by the handler. Such advice may be verbal but it shall be confirmed in writing by the Federal-State Inspection Service by execution of the waiver form on which the handler submitted his written request. A confirmed copy thereof shall be forwarded by the inspection service to the office of the Control Committee;

(3) The Federal-State Inspection Service furnishes the handler with the number of the waiver which shall cover the fruit on which inspection is requested;

(4) When so instructed, the handler plainly and conspicuously marks one end of each container with the letter W and the waiver number supplied by the Federal-State Inspection Service. The letter W and the number so marked shall be not less than one-half inch in height.

(b) *Minimum quantities.* Notwithstanding any other provisions of this section, pears, plums and peaches may be handled without regard to the provisions of §§ 917.37, 917.41, 917.42, 917.45 and 917.50 under the following conditions:

(1) Such pears, plums and peaches meet the grade requirements set forth in Articles 35, 38, and 34, respectively of the Food and Agriculture Code of California.

(2) Such pears, plums and peaches are for home use and not for resale.

(3) The shipment does not exceed 200 pounds of pears, plums, and peaches to any one person during any one day.

(4) Such pears, plums and peaches are handled by the person who produces them; and the handling takes place (i) on the premises where grown, (ii) at a packinghouse or retail stand nearby which is operated by said handler, or (iii) at a certified farmers market in compliance with section 1392 of the regulations of the California Department of Food and Agriculture: *Provided,* That the exemption for certified farmers markets shall not apply to fruit sorted out by a handler unless such fruit is packed in containers clearly and legibly marked to show that the fruit contained therein is only to be sold at a certified farmers market, and the handler complies with regulations established under §§ 917.37, 917.41(a)(1), 917.45, and 917.50, except that such fruit may be handled to such markets if the fruit fails to meet the applicable grade only on account of being soft and overripe.

[31 FR 7476, May 24, 1966, as amended at 41 FR 22071, June 1, 1976; 41 FR 28509, July 12, 1976; 42 FR 22875, May 5, 1977; 47 FR 30452, July 14, 1982; 49 FR 36361, Sept. 17, 1984]

§ 917.149 Special purpose shipments.

Any person may file a request with the Pear Commodity Committee to transport pears to a packing facility located in the State of Oregon without inspection and certification prior to such transporting. The committee may approve such a request subject to the following terms and conditions:

(a) Approval shall be requested by the person prior to transporting the pears out of the area of production.

(b) Such person shall file with the committee, in such manner as required, reports showing, among other things, the date and quantity of pears comprising each shipment of pears transported to Oregon and the disposition thereof.

(c) All such pears shall be of the person's own production and the packing facility to which they are transported must be owned and operated by that person.

(d) All such pears shall be inspected and certified, as required by § 917.45, by the Federal or Federal-State Inspection Service prior to the time such pears are shipped from the packing facility. Any pears shipped to any such facility which, upon inspection, do not meet the requirements of the then ef-

fective grade, size, or quality regulations, may be shipped, or handled, within the State, for consumption by any charitable institution or for distribution by any relief agency or for conversion into products. Prior to any such shipment or handling, there shall first have been submitted to the committee proof satisfactory to the committee that the pears will not be handled contrary to the requirements of the marketing agreement and order. Such proof shall include a written certificate, executed by both the handler and the intended receiver, stating that the pears will not be used for any purpose not authorized by this section.

[41 FR 31180, July 27, 1976]

REGULATION OF DAILY SHIPMENTS

§ 917.150 Lot stamping.

Except when loaded directly into railway cars or exempted under § 917.143, containers of fruit shall be plainly stamped, prior to shipment, with a Federal-State Inspection Service lot stamp number, assigned by such Service, showing that such fruit has been inspected in accordance with § 917.45.

[31 FR 7477, May 24, 1966]

REPORTS

§ 917.176 Pears.

(a) *Report of daily packout.* When requested by the Pear Commodity Committee, each shipper who ships pears shall furnish to the manager of the Control Committee or when designated to the Federal-State Inspection Service a report of the number of packages by container type, by variety and by district of origin, which the shipper packed during the preceding day.

(b) *Recapitulation of shipments.* When requested by the Pear Commodity Committee, each shipper of pears shall furnish to the manager of the Control Committee a recapitulation of his shipments. The recapitulation shall show: (1) The name of the shipper, (2) the shipping point, (3) the district of origin, (4) the variety, and (5) the number of packages, by size, for each container type.

(c) *Report of pears held in storage.* Each shipper who has pears under refrigeration in a storage warehouse shall upon request, file with the manager of the Control Committee within the time specified in the request an accurate report containing the following information:

(1) The name and address of the shipper; and

(2) The total quantity, as of the date specified in the request, of pears in storage outside of the State of California and in storage in the State of California.

[39 FR 27117, July 25, 1974]

§ 917.177 Plums.

(a) *Report of daily packout.* When requested by the Plum Commodity Committee, each shipper who ships plums shall furnish to the manager of the Control Committee or when designated to the Federal-State Inspection Service a report of the number of packages by container type, by variety and by district of origin, which the shipper packed during the preceding day.

(b) *Recapitulation of shipments.* Each shipper of plums shall furnish to the manager of the Control Committee not later than the tenth day of each month a recapitulation of his shipments of each variety completed during the preceding month. The recapitulation shall show: (1) The name of the shipper, (2) the shipping point, (3) the district of origin, (4) the variety, and (5) number of packages, by size, for each container type.

(c) *Report of plums held in storage.* Each shipper who has plums under refrigeration in storage warehouse shall, upon request, file with the manager of the Control Committee within the time specified in the request, an accurate report containing the following information:

(1) The name and address of the shipper;

(2) The total quantity, as of the date specified in the request, of each variety of such plums in storage in the State of California, and the portion of such quantity which has been in such shortage for a period less than 60 hours; and

(3) The total quantity of each variety of such plums in storage outside of the State of California as of such date.

[39 FR 27117, July 25, 1974]

§ 917.178 Peaches.

(a) *Report of daily packout.* When requested by the Peach Commodity Committee, each shipper who ships peaches shall furnish to the manager of the Control Committee or when designated to the Federal-State Inspection Service a report of the number of packages by container type, by variety and by district or origin, which the shipper packed during the preceding day.

(b) *Recapitulation of shipments.* Each shipper of peaches shall furnish to the manager of the Control Committee not later than the tenth day of each month a recapitulation of his shipments of each variety completed during the preceding month. The recapitulation shall show: (1) The name of the shipper, (2) the shipping point, (3) the district of origin, (4) the variety, and (5) the number of packages, by size, for each container type.

[39 FR 27118, July 25, 1974]

§ 917.179 Assessment reports.

In lieu of the reporting requirements set forth in §§ 917.176, 917.177, and 917.178, the Control Committee may request a shipper to file, and upon such request such shipper shall file with the manager of the Control Committee a monthly summary showing the total quantity of pears, plums, and peaches which he shipped during the specified month; and such shipper may remit with his monthly report sufficient funds to cover the assessment due on the shipments which he reports.

[23 FR 3996, June 7, 1958. Redesignated at 26 FR 12751, Dec. 30, 1961, and amended at 31 FR 7477, May 24, 1966]

NOTE: After January 1, 1979, "Budget of Expenses and Rate of Assessment" regulations (e.g. sections .200 through .299) and "Handling" regulations (e.g. sections .300 through .399) which are in effect for a year or less, will not be carried in the Code of Federal Regulations. For FEDERAL REGISTER citations affecting these regulations, see the "List of CFR Sections Affected" in this volume.

Subpart—Container and Pack Regulation

§ 917.442 Peach Regulation 8.

(a) No handler shall ship any package or container of any variety of peaches except in accordance with the following terms and conditions:

(1) Such peaches, when packed in any closed package or container, except master containers of consumer packages and individual consumer packages therein, shall conform to the requirements of standard pack.

(2) Each package or container of peaches shall bear, on one outside end in plain sight and in plain letters the name "peaches" and except for consumer packages in master containers the name of the variety, if known or, when the variety is not known, the words "unknown variety."

(3) Each package or container of peaches shall bear, on one outside end, in plain sight and in plain letters, the following count and/or size description of the peaches as applicable:

(i) The size of peaches packed in molded forms (tray-packs) in No. 22D standard lug boxes, experimental containers, cartons, No. 12B fruit (peach) boxes, or flats and the size of wrapped peaches packed in rows in No. 12B fruit (peach) boxes shall be indicated in accordance with the number of peaches in the container, such as "80 count," "88 count," etc.

(ii) The size of peaches in molded forms in experimental containers shall be indicated according to the number of such peaches when packed in molded forms in the No. 22D standard lug box in accordance with the requirements of standard pack, such as "80 size," "88 size," etc, along with count requirements in paragraph (a)(3)(i).

(iii) The size of peaches loose-filled or tight-filled in any container shall be indicted according to the number of such peaches when packed in molded forms in No. 22D standard lug boxes, in accordance with the requirements of standard pack, such as "80 size," "88 size," etc.

(4) The variation in diameter between the smallest and largest peach in any individual container shall not

exceed one-forth (¼) inch for size 80 and smaller and three-eights (⅜) inch for peaches larger than size 80: *Provided,* That not more than five (5) percent, by count, of the peaches in any individual container may fail to meet the diameter requirements of this paragraph.

(5) Each No. 22D standard lug box of loose-filled peaches shall bear on one outside end, in plain sight and in plain letters, the words "25 pounds net weight."

(6) Each No. 22E standard lug box of loose-filled peaches shall bear on one outside end, in plain sight and in plain letters, the words "35 pounds net weight."

(7) Each bulk bin container of loose-filled peaches shall contain not less than 400 pounds net weight, and bear on one outside panel, in plain sight and in plain letters, the following information:

(i) The name and address (including zip code) of the shipper.

(ii) The net weight.

(8) Each master container when filled with peaches packed in consumer packages shall bear on one outside end in plain sight and in plain letters the following information:

(1) The number of individual consumer packages, the net weight of each consumer package, and the size description of the contents.

(ii) The name and address (including zip code) of the shipper.

(9) Each individual consumer package shall bear the name and address of the shipper and the net weight.

(b) As used herein, "standard pack" shall have the same meaning as set forth in U.S. Standards for Grades of Peaches (§§ 51.1210 to 51.1223) and all other terms shall have the same meaning as when used in the amended marketing agreement and order. "No. 12B standard fruit box" measures 2⅝ to 7⅛ x 11½ x 16⅛ inches, "No 22D standard lug box" measures 2⅞ to 7⅛ x 13 ½ x16⅛ inches. "No. 22E standard lug box" measures 8¾ x 13½ x 16⅛ inches. All dimensions are given in depth (inside dimensions) by width by length (outside dimensions).

[50 FR 39074, Sept. 27, 1985]

§ 917.454 Plum Regulation 17.

(a) No handler shall ship any package or container of any variety of plums except in accordance with the following terms and conditions:

(1) Such plums, when shipped in closed in packages or containers, except master containers of consumer packages and individual consumer packages therein, shall conform to the requirements of standard pack:

(2) The diameters of the smallest and largest plums in any individual package or container shall not vary more than one-fourth (¼) inch: *Provided,* That a total of not more than five (5) percent, by count, of the plums in any package or container may fail to meet this requirement.

(3) Each package or container of plums shall bear on one outside end, in plain sight and in plain letters, the name "plums" and except for consumer packages in master containers the name of variety if known or, when the variety is not known, the words "unknown variety".

(4) Each package or container of plums shall bear on one outside end, in plain sight and in plain letters, the size description of the contents which description shall conform to the following as applicable:

(i) The size of plums in four-basket crates shall be indicated in accordance with the arrangement of the plums in the top layer of the baskets, such as "4x4 size," "4x5 size," etc.

(ii) The size of plums loose-filled or tight-filled in standard lug boxes, cartons, or other packages or containers shall be indicated in accordance with the equivalent size designation for such plums when packed in four-basket crates, such as "4x4 size," etc.

(iii) The size of plums packed in molded forms (tray-packs) in cartons or lugs and of wrapped plums packed in No. 12B fruit (peach) boxes shall be indicated in accordance with the number of plums in the container, such as "88 count," "108 count," etc.

(iv) The size of plums packed in molded forms (tray-packs) in No. 22G standard lug boxes shall be indicated according to the number of such plums when packed in molded forms in the No. 22D standard lug box in ac-

cordance with the requirements of standard pack, such as "80 size," "88 size," etc., along with count requirements in paragraph (a)(4)(iii) of this section.

(5) Each package or container of loose-filled or tight-filled plums other than bulk bin containers, master containers of consumer packages, and individual consumer packages in master containers shall bear on one outside end, in plain sight and in plain letters, the words "28 pounds net weight."

(6) Each bulk bin container of loose-filled plums shall contain not less than 400 pounds net weight, and bear on one outside panel, in plain sight and in plain letters, the following information:

(i) The name and address (including zip code) of the shipper.

(ii) The net weight.

(7) Each master container when filled with plums packed in consumer packages shall bear on one outside end in plain sight and in plain letters the following information:

(i) The number of individual consumer packages, the net weight of each consumer package, and the size description of the contents.

(ii) The name and address (including zip code) of the shipper.

(8) Each individual consumer package shall bear the name and address of the shipper and the net weight.

(b) Subject to the provisions hereinafter set forth in paragraph (c), any package or container of any variety of plums may be marked with the words "tight—fill" only if such package or container and the contents thereof meet the following requirements:

(1) The depth of each container shall be equal to at least three times the average diameter of the plums therein as determined by measuring representative fruits.

(2) All container faces shall be composed of at least two complete layers of wax- or resin-treated corrugated paperboard which treatment shall consist of coating both surfaces of each layer with wax or resin, or impregnating at least the corrugating medium in each layer with wax or resin. The material comprising each botton layer and one layer of both sides and both ends of each container shall have been marked or certified as having a Mullen or Cady test strength of at least 275 pounds, and the material in all other components of each container shall have been marked or certified as having a Mullen or Cady test strength of at least 250 pounds.

(3) Each container shall be well filled and the plums therein shall have been well settled by vibration, according to approved and recognized methods.

(4) Each container shall have a top pad containing wood excelsior or redwood bark. Such pads that contain wood excelsior shall weigh at least 160 pounds per 1,000 square feet of pad and such pads that contain redwood bark shall weigh at least 200 pounds per 1,000 square feet of pad.

(5) The cover shall be firmly seated against the lower half of each container and firmly fastened to it.

(c) Ten percent of the packages or containers in any lot may fail to meet the requirements of paragraph (b) of this regulation.

(d) When used herein "standard pack" and "diameter" shall have the same meanings as set forth in the U.S. Standards for Grades of Fresh Plums and Prunes (§§ 51.1520 to 51.1538) and all other terms shall have the same meaning as when used in the amended marketing agreement and order. "No. 12B standard fruit box" measures 2⅜ to 7⅛ x 11½ x 16½ inches, "No. 22D standard lug box" measures 2⅞ to 7⅛ x 13½ x 16½ inches and "No. 22G standard lug box" measures 7⅜ to 7½ x 13¼ x 15⅞ inches. All dimensions are given in depth (inside dimensions) by width by length (outside dimensions).

[45 FR 47116, July 14, 1980, as amended at 50 FR 39075, Sept. 27, 1985]

Subpart—Grade and Size Regulation

§ 917.459 Peach Regulation 14.

(a) No handler shall ship:

(1) Any package or container of any variety of peaches unless such peaches meet the requirements of U.S. No. 1 grade: *Provided,* That maturity shall be determined by the application of color standards by variety or such other tests as determined to be proper

by the Federal or Federal-State Inspection Service.

(2) Any package or container of Armgold, Desertgold, Royal April, Royal Gold variety peaches unless:

(i) Such peaches when packed in molded forms (tray pack) in a No. 22D standard lug box are of a size that will pack, in accordance with the requirements of standard pack, not more than 96 peaches in the box; or

(ii) Such peaches in any container when packed other than as specified in paragraph (a)(2)(i) of this section are of a size that a 16-pound sample, representative of the peaches in the package or container, contains not more than 96 peaches.

(3) Any package or container of any type of Morning Sun or Springold variety peaches unless:

(i) Such peaches when packed in molded forms (tray pack) in a No. 22D standard lug box are of a size that will pack, in accordance with the requirements of standard pack, not more than 84 peaches in the box;

(ii) Such peaches when packed in a No. 12B standard fruit (peach) box are of a size that will pack, in accordance with the requirements of standard pack, not more than 65 peaches in the box; or

(iii) Such peaches in any container when packed other than as specified in paragraphs (a)(3) (i) and (ii) of this section are of a size that a 16-pound sample, representative of the peaches in the package or container, contains not more than 79 peaches.

(4) Any package or container of Babcock, Coronet, Early Coronet, Early Royal May, Firecrest, First Lady, Flavorcrest, Flavor Red, Golden Lady, Honey Red, JJK-1, June Crest, June Lady, May Crest, May Lady, Merrill Gem, Merrill Gemfree, Redhaven, Redtop, Regina, Royal May, Springcrest, Spring Lady, Willie Red, or 50-178 variety of peaches unless:

(i) Such peaches when packed in molded forms (tray pack) in a No. 22D standard lug box are of a size that will pack, in accordance with the requirements of standard pack, not more than 80 peaches in the box; or

(ii) Such peaches when packed in a No. 12B standard fruit (peach) box are of a size that will pack, in accordance with the requirements of standard pack, not more than 65 peaches in the box; or

(iii) Such peaches in any container when packed other than as specified in paragraphs (a)(4) (i) and (ii) of this section are of a size that a 16-pound sample, representative of the peaches in the package or container, contains not more than 71 peaches.

(5) Any package or container of Angelus, August Sun, Autumn Gem, Autumn Lady, Belmont, Blum's Beauty, Cassie, Cal Red, Carnival, Early Fairtime, Early O'Henry, Elberta, Elegant Lady, Fairtime, Fay Elberta, Fayette, Fiesta, Fire Red, flamecrest, Fortyniner, Franciscan, Halloween, July Elberta (Early Elberta, Kim Elberta and Socala), July Lady, July Sun, Kings Lady, Lacey, Mardigras, O'Henry, Pacifica, Parade, Preuss Suncrest, Red Cal, Redglobe, Red Lady, Rio Oso Gem, Royal Flame, Scarlet Lady, Sparkel, Summerset, Suncrest, Sun Lady, Toreador, or Windsor variety of peaches unless:

(i) Such peaches when packed in molded forms (tray pack) in a No. 22D standard lug box are of a size that will pack, in accordance with the requirements of standard pack, not more than 72 peaches in the box;

(ii) Such peaches when packed in a No. 12B standard fruit (peach) box are of a size that will pack, in accordance with the requirements of standard pack, not more than 65 peaches in the box; or

(iii) Such peaches in any container when packed other than as specified in paragraphs (a)(5) (i) and (ii) of this section are of a size that a 16-pound sample, representative of the peaches in the package or container, contains not more than 64 peaches.

(b) On and after August 16, 1981, except as otherwise noted in paragraph (c) of this section, no handler shall handle any package or container of any variety of peaches not specifically named in paragraph (a) (2), (3), (4), or (5) of this section unless:

(1) Such peaches when packed in molded forms (tray pack) in a No. 22D standard lug box are of a size that will pack, in accordance with the requirements of standard pack, not more than 96 peaches in the box; or

(2) Such peaches in any container when packed other than as specified in paragraph (b)(1) of this section are of a size that a 16-pound sample, representative of the peaches in the package or container, contains not more than 96 peaches.

(c) During July 3 through October 31, of each fiscal period, no handler shall handle any package or container of any variety of peaches not specifically named in paragraphs (a) (2), (3), (4), or (5) of this section unless:

(1) Such peaches when packed in molded forms (tray pack) in a No. 22D standard lug box are of a size that will pack, in accordance with the requirements of standard pack, not more than 80 peaches in the box; or

(2) Such peaches when packed in a No. 12B standard fruit (peach) box are of a size that will pack, in accordance with the requirements of standard pack, not more than 65 peaches in the box; or

(3) Such peaches in any container when packed other than as specified in paragraphs (c) (1) or (2) of this section are of a size that a 16-pound sample, representative of the peaches in the package or container, contains not more than 71 peaches.

(d) As used herein, "U.S. No. 1" and "standard pack" mean the same as defined in the United States Standards for Grades of peaches (7 CFR 51.1210 through 51.1223); and "No. 22D standard lug box" and "No. 12B standard fruit (peach) box" mean the same as defined in section 1380.19(18) of the "Regulations of the California Department of Food and Agriculture."

[46 FR 38338, July 27, 1981, as amended at 47 FR 35753, Aug. 17, 1982; 48 FR 16877, Apr. 20, 1983; 49 FR 17004, Apr. 23, 1984; 49 FR 22463, May 30, 1984; 49 FR 30056, July 26, 1984; 50 FR 12217, Mar. 28, 1985; 50 FR 27814, July 8, 1985]

§ 917.460 Plum Regulation 19.

(a) No handler shall ship any lot of packages or containers of any plums, other than varieties named in paragraph (b) hereof, unless such plums grade at least U.S. No. 1, except that healed cracks emanating from the stem-end which do not cause serious damage shall not be considered as a grade defect with respect to such grade: *Provided,* That maturity shall be determined by the application of color standards by variety or such other tests as determined to be proper by the Federal or Federal-State Inspection Service; and *Provided further,* That internal discoloration not considered serious damage will be permitted.

(b) No handler shall ship any lot of packages or containers of Tragedy or Kelsey plums unless such plums grade U.S. No. 1 with additional tolerance of 10 percent for defects not considered serious damage, except that healed cracks emanating from the stem-end which do not cause serious damage shall not be considered as a grade defect with respect to such grade: *Provided,* That internal discoloration not considered serious damage will be permitted; and *Provided further,* That maturity shall be determined by the application of color standards by variety or such other tests as determined to be proper by the Federal or Federal-State Inspection Service.

(c) No handler shall ship any package or other container of any variety of plums listed in Column A of the following Table I unless such plums are of a size that an eight-pound sample, representative of the sizes of the plums in the package or container, contains not more than the number of plums listed for the variety in Column B of said table.

TABLE I

Column A, variety	Column B plums per sample
Ace	55
Amazon	64
Ambra	67
Andys Pride	69
Angeleno	67
Angie	67
Armelita	59
August Rosa	64
Autumn Rosa	72
Bee Gee	65
Blackamber	56
Black Beaut	69
Black Diamond	59
Black Giant	59
Black Knight	58
Carolyn Harris	61
Casselman	63
Catalina	59
Durado	74
Early Hawaiian Ann	60

TABLE I—Continued

Column A, variety	Column B plums per sample
Ebony	66
El Dorado	68
Empress	57
Freedom	56
Fresno Black	67
Friar	56
Frontier	61
Gar-Rosa	71
Grand Rosa	54
July Red	64
July Santa Rosa	69
Kelsey	47
King David	50
King's Black	58
Laroda	58
Late Santa Rosa (including improved Late Santa Rosa and Swall Rosa)	64
Linda Rosa	63
Mariposa	61
Midsummer	63
Nubiana	58
President	57
Prima Rosa	74
Queen Ann	50
Queen Rosa	53
Red Beaut	74
Red Glow	60
Red Rosa	64
Redroy	58
Rich Red	74
Rosa Ann	69
Rosemary	50
Rose Ann	60
Royal Red	74
Roysum	74
Santa Rosa	69
Simka, Arrosa, New Yorker	50
Spring Beaut	74
Standard	83
Wickson	51

(d) As used herein, "U.S. No. 1" and "serious damage" mean the same as defined in the United States Standards for Grades of Fresh Plums and Prunes (7 CFR 51.1520 through 51.1538).

[47 FR 35753, Aug. 17, 1982, as amended at 48 FR 16878, Apr. 20, 1983; 49 FR 22463, May 30, 1984; 49 FR 30056, July 26, 1984; 50 FR 12217, Mar. 28, 1985; 50 FR 27814, July 8, 1985]

§ 917.461 Pear Regulation 12.

(a) On and after August 5, 1982, no handler shall ship:

(1) Bartlett or Max-Red (Max-Red Bartlett, Red Bartlett) varieties of pears which do not grade at least U.S. Combination with not less than 80 percent, by count, of the pears grading at least U.S. No. 1: *Provided,* That during the period August 5, 1982, through December 1, 1982, no handler shall ship any such varieties of pears unless they grade at least U.S. Combination with not less than 70 percent, by count, of the pears grading at least U.S. No. 1.

(2) Any box or container of Bartlett or Max-Red (Max-Red Bartlett, Red Bartlett) varieties of pears unless such pears are of a size not smaller than the size known commercially as size 165;

(3) Any box or container of Bartlett or Max-Red (Max-Red Bartlett, Red Bartlett) varieties of pears unless such box or container is stamped or otherwise marked, in plain sight and in plain letters, on one outside end with the name of the variety;

(4) Bartlett or Max-Red (Max-Red Bartlett, Red Bartlett) varieties of pears, when packed in closed containers, unless such box or container conforms to the requirement of standard pack, except that such pears may be fairly tightly packed;

(5) Bartlett or Max-Red (Max-Red Bartlett, Red Bartlett) varieties of pears, when packed in other than a closed container, unless such pears do not vary more than ⅜ inch in their transverse diameter for counts 120 or less, and ¼ inch for counts 135 to 165, inclusive: *Provided,* That 10 percent of the containers in any lot may fail to meet the requirements of this subparagraph: *Provided further,* That such varieties of pears shipped in bulk bin containers containing 300 pounds or more of pears shall be exempt from the requirements in this subparagraph.

(6) Any box or container of Bartlett or Max-Red (Max-Red Bartlett, Red Bartlett) varieties of pears in volume fill cartons (not packed in rows and not wrap packed) unless (i) such cartons are well filled with pears fairly uniform in size; (ii) such pears are packed fairly tight; (iii) there is an approved top pad in each carton that will cover the fruit with no more than ¼ inch between the pad and any side or end of the carton; and (iv) the top of the carton shall be securely fastened to the bottom: *Provided,* That 10 percent of the cartons in any lot

may fail to meet the requirements of this paragraph.

(b) *Definitions.* (1) "Size known commercially as size 165" means a size of pear that will pack a standard pear box, packed in accordance with the specifications of standard pack, with 165 pears and that one-half of the count size designated, representative of the size of the pears in the box or container, shall weigh at least 22 pounds.

(2) "Standard pear box" means the container so designated in § 1380.19 of the regulations of the California Department of Food and Agriculture.

(3) "U.S. No. 1" "U.S. Combination", and "Standard Pack" mean the same as defined in the United States Standards for Summer and Fall Pears (7 CFR 51.1260 to 51.1280).

(4) "Approved top pad" shall mean a pad of wood-type excelsior construction, fairly uniform in thickness, weighing at least 160 pounds per 1,000 square feet (e.g., an 11 inch by 17 inch pad will weigh at least 21 pounds per 100 pads) or an equivalent made of material other than wood excelsior approved by the committee.

[46 FR 48116, Oct. 1, 1981, as amended at 47 FR 34116, Aug. 6, 1982]

PART 918—FRESH PEACHES GROWN IN GEORGIA

Subpart—Order Regulating Handling

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AUTHORITY: Secs. 1-19, 48 Stat. 31, as amended; 7 U.S.C. 601-674.

Subpart—Order Regulating Handling

SOURCE: 20 FR 1635, Mar. 18, 1955, unless otherwise noted. Redesignated at 26 FR 12751, Dec. 30, 1961.

DEFINITIONS

§ 918.1 Secretary.

"Secretary" means the Secretary of Agriculture of the United States, or any officer or employee of the Department to whom authority has heretofore been delegated, or to whom authority may hereafter be delegated, to act in his stead.

[42 FR 40884, Aug. 12, 1977]

§ 918.2 Act.

"Act" means Public Act No. 10, 73d Congress (May 12, 1933), as amended and reenacted and amended by the Agricultural Marketing Agreement Act of 1937, as amended (48 Stat. 31, as amended; 7 U.S.C. 601 et seq.).

§ 918.3 Person.

"Person" means an individual, marketing agent, partnership, corporation, marketing agency, association, legal representative, or any organized group or business unit of individuals.

§ 918.4 Area.

"Area" means and includes the entire State of Georgia.

§ 918.5 Peaches.

"Peaches" means and includes all varieties of peaches grown within the aforesaid area.

§ 918.6 Shipper.

"Shipper" is synonymous with "handler" and means any person who, as owner, agent, or otherwise, handles peaches.

§ 918.7 Ship.

"Ship" is synonymous with "handle" and means to sell, transport, or in any other way (except as a common or contract carrier of peaches owned by another person) to place peaches, in fresh form, in the current of commerce between the State of Georgia and any point outside thereof.

§ 918.8 Grower.

"Grower" means any person engaged in the production of peaches for market; however, as used in § 918.62 "grower" shall also include any purchaser of a crop of peaches on the trees.

§ 918.9 Fiscal period.

"Fiscal period" means the period beginning on March 1 of each year and ending on the last day of February of the following year.

§ 918.10 District.

"District" means the applicable one of the following described geographical subdivisions or the area:

(a) "South Georgia District" shall include the counties of Quitman, Coffee, Miller, Jeff Davis, Baker, Toombs, Terrell, Ware, Mitchell, Pierce, Worth, Evans, Brooks, Liberty, Turner, Glynn, Irwin, Echols, Atkinson, Early, Wheeler, Decatur, Montgomery, Randolph, Bacon, Dougherty, Wayne, Crisp, Charlton, Thomas, Bryan, Tift, McIntosh, Ben Hill, Berrien, Lanier, Clay, Telfair, Seminole, Clinch, Calhoun, Appling, Lee, Tattnall, Grandy, Brantley, Colquitt, Long, Cook, Chatham, Wilcox, Camden, Lowndes, Steward, Pulaski, Webster, Dodge, Sumter and Dooly;

(b) "Central Georgia District" shall include the counties of Muscogee, Bleckley, Marion, Laurens, Schley, Johnson, Macon, Candler, Houston, Glascock, Bullock, Twiggs, Wilkinson, Taylor, Washington, Crawford, Emanual, Peach, Jefferson, Burke, Effingham, Chattahoochee, Treutlen, Bibb, Jenkins, and Screven; and

(c) "North Georgia District" shall include the counties of Harris, Talbot, Upson, Monroe, Jones, Baldwin, Hancock, Warren, McDuffie, Polk, Troup, Gwinnett, Lamar, Jackson, Fayette, Forsyth, Jasper, Franklin, Douglas, Gordon, Henry, Dade, Greene, Whitfield, Lincoln, Haralson, Paulding, Cobb, De Kalb, Rockdale, Walton, Oconee, Oglethorpe, Floyd, Richmond, Cherokee, Pike, Clarke, Coweta, Elbert, Butts, Banks, Carroll, Chatooga, Clayton, Dawson, Morgan, Catoosa, Wilkes, Gilmer, Fannin, Lumpkin, Union, White, Towns, Haversham, Stephens, Rabun, Columbia, Bartow, Meriwether, Barrow, Heard, Madison, Spalding, Hall, Putnam, Hart, Fulton, Pickens, Newton, Walker, Taliaferro, and Murray.

[42 FR 40884, Aug. 12, 1977]

§ 918.11 Adjacent markets.

"Adjacent markets" means the States of Florida, Alabama, Tennessee, North Carolina, South Carolina, Mississippi, and that portion of Louisiana which is east of the Mississippi River.

§ 918.12 Peaches in bulk.

"Peaches in bulk" means peaches loose in a conveyance or loose in containers without being placed-packed or ring-faced and without liners.

COMMITTEES

§ 918.15 Establishment of Industry Committee.

An Industry Committee, consisting of nine members, and alternates, is hereby established to administer the terms and provisions of this part. Eight members and alternates shall be growers of peaches and one member and alternate shall be individuals who are neither growers nor handlers of peaches. The 8 members who shall be growers shall be known as "grower members" and the remaining member shall be known as a "public member". The members of said Industry Committee and their respective alternates, shall be selected in accordance with the provisions of this part.

[42 FR 40884 Aug. 12, 1977]

§ 918.16 Representation by grower members by districts on Industry Committee.

(a) Two members of the Industry Committee shall be selected from among growers in the South Georgia District.

(b) Four members of the Industry Committee shall be selected from among growers in the Central Georgia District.

(c) Two members of the Industry Committee shall be selected from among growers in the North Georgia District.

[42 FR 40884, Aug. 12, 1977]

§ 918.17 [Reserved]

§ 918.18 Nomination of members of Industry Committee.

(a) The Industry Committee shall hold or cause to be held prior to January 31 of each year a meeting or meetings of growers in each of the districts designated in § 918.10, or as redesignated pursuant to § 918.29(k), for the purpose of designating nominees for grower member and alternate member

positions on the Industry Committee. The Committee shall give adequate notice of any such meeting or meetings to all growers in the respective district.

(b) Members of the committee, selected pursuant to § 918.21, may nominate individuals for the public member and alternate member positions on the Industry Committee, and promptly send the names of these nominees, along with their qualifications, to the Secretary.

[42 FR 40884, Aug. 12, 1977]

§ 918.19 Conduct of nomination meetings.

At each meeting held to elect nominees for grower member and alternate grower member positions on the Industry Committee, the growers eligible to participate therein shall select a chairman and secretary therefor. The chairman of each meeting shall announce at such meeting the name of each person for whom a vote has been cast, whether as member or alternate member, and the number of votes cast for each such person, and the chairman or the secretary of the meeting shall forthwith transmit such information to the Secretary or the designated representative of the Secretary. At each such meeting at least two nominees shall be designated for each position as member and at least two nominees shall be designated for each position as alternate member on the committee as representative or representatives of the respective district.

[42 FR 40885, Aug. 12, 1977]

§ 918.20 Eligibility to vote at nomination meetings.

Only growers in attendance at a meeting for election of nominees shall participate in the nomination of members and their alternates. In the event a grower is engaged in producing peaches in more than one district, such grower shall elect the district within which he shall participate in designating nominees. Each grower shall be entitled to cast only one vote on behalf of himself, his agents, affiliates, subsidiaries, and representatives for each position on the committee for which such voter is eligible to participate in designating a nominee at the respective meeting.

§ 918.21 Selection of members of Industry Committee.

The Secretary may select the members of the Industry Committee and their respective alternates, from nominations made by growers as provided in §§ 918.15 through 918.26 or the Secretary may select such members and alternates from among other persons.

[42 FR 40885, Aug. 12, 1977]

§ 918.22 Vacancies.

In the event nominations are not made for membership on the Industry Committee, pursuant to the provisions of §§ 918.15 through 918.26, by February 15 of the respective fiscal period, the Secretary may select such members and their respective alternates without waiting for nominees to be designated. To fill any vacancy occasioned by the failure of any person, selected as a member of the Industry Committee or as an alternate member thereof, to qualify, or in the event of the death, removal, resignation, or disqualification of any qualified member or alternate, a successor for his unexpired term shall be selected by the Secretary.

[42 FR 40885, Aug. 12, 1977]

§ 918.23 Qualification.

Each person selected as a member of the Industry Committee or as an alternate member thereof shall promptly qualify by filing with the Secretary, or with the designated representative of the Secretary, a written acceptance of appointment.

§ 918.24 Alternate members of Industry Committee.

There shall be an alternate member for each member of the Industry Committee. Each such alternate member shall have the same qualifications and shall be selected in the same manner as the respective member for whom such individual is to serve as alternate. The alternate for a member of the committee shall, in the event of the respective member's absence, act in the place of said member; and, in the

event of such member's removal, resignation, disqualification, or death, the alternate for said member shall, until a successor for the unexpired term of said member has been selected, act in the place of said member.

§ 918.25 Eligibility for membership on Industry Committee.

Any person nominated or selected to serve as a member or as an alternate member of the Industry Committee, except for the public member and alternate, shall be an individual grower of peaches in the respective district for which selected, or an officer, employee, or agent of a corporate grower or corporate gorwers in such district. The public member and alternate shall reside in Georgia, but neither person shall be grower or handler of peaches.

[42 FR 40884, Aug 12, 1977]

§ 918.26 Term of office.

The members of the Industry Committee and their respective alternates, shall serve for the fiscal period for which they have been selected and if their successors have not been selected and qualified prior to the end of the respective fiscal period, each such member or alternate shall continue to serve until his respective successor shall have been selected and qualified.

[42 FR 40884, Aug. 12, 1977]

§ 918.27 Reimbursement for expense.

Each member of the Industry Committee and each alternate member when acting for a member or when designated by the committee to attend, may be reimbursed for expenses incurred while attending committee meetings; while attending to committee business authorized by the committee; and while attending each consultation or conference with any committee, or representatives there of, established under any marketing agreement and order program pursuant to the act, with respect to the handling of peaches grown in Georgia or in any other State.

[42 FR 40885, Aug. 12, 1977]

§ 918.28 Powers.

The Industry Committee shall have the following powers:

(a) To administer, as herein specifically provided the terms and provisions of this part;

(b) To make, in accordance with the provisions contained in this part, administrative rules and regulations;

(c) To receive, investigate, and report to the Secretary complaints of violation of the provisions in this part; and

(d) To recommend to the Secretary amendments to this part.

§ 918.29 Duties.

The Industry Committee shall have the following duties:

(a) To act as intermediary between the Secretary and any grower or handler;

(b) To keep minutes, books, and records which will clearly reflect all of its acts and transactions, and such minutes, books, and records shall at all times be subject to examination by the Secretary;

(c) To furnish the Secretary such available information as may be requested by the Secretary;

(d) To select such employees as it may deem necessary, and to determine the salaries and define the duties of such employees;

(e) To cause its books to be audited by one or more competent accountants at least once each fiscal period, and at such other times as it deems necessary or as the Secretary may request, and to file with the Secretary a copy of each such audit report;

(f) To prepare from time to time statements of the financial operations of the committee and to make such statements, together with the minutes of the meetings of said committee, available, at the office of the committee, for inspection by any grower;

(g) To perform such duties in connection with the administration of section 32 of the act to amend the Agricultural Adjustment Act, and for other purposes, Public Act No. 320, 74th Congress (August 24, 1935), as amended, as may from time to time be assigned to the committee by the Secretary;

(h) To consult with any other committee established under any marketing agreement and order program, pursuant to the aforesaid act, with respect to the handling of peaches grown in the area or in any other State;

(i) To defend all legal proceedings against any Industry Committee member or members (individually or as members), or any officer or employee of such committee, arising out of any act or omission made in good faith pursuant to the provisions of this part;

(j) To select a chairman of the Industry Committee and such other officers as it may deem advisable;

(k) To redefine, subject to the approval of the Secretary, the districts into which the area has been divided in this subpart or change the representation, subject to the approval of the Secretary, from any district on the Industry Committee;

(l) To authorize, whenever the committee deems it advisable, an employee or employees of the committee to perform any ministerial duties of the committee, subject to the limitations set forth in this subpart: *Provided,* That such authorization by the committee shall specify the employee or employees and state definitely the limitation of the authority thus vested in the respective employee or employees: *Provided further,* That the committee shall retain concurrent authority in connection with any such duties and shall not authorize any employee or employees to perform: (1) Any duties of the committee relating to the recommendations to the Secretary pursuant to §§ 918.60 through 918.63; or (2) the duties or authority of the committee relating to the establishment of rules and regulations pursuant to the provisions and subject to the limitations set forth in this subpart;

(m) Each season, prior to making any recommendation to the Secretary for a regulation of shipments pursuant to this subpart to determine the marketing policy to be followed during the ensuing season and to submit a report of such policy to the Secretary as required by § 918.48;

(n) To supervise the regulation of shipments of peaches pursuant to this part;

(o) To establish such other committees or subcommittees to aid the Industry Committee in the performance of its duties under this part as the Industry Committee may deem advisable;

(p) To submit to the Secretary, prior to May 1 of each fiscal period, a budget of its expenses and a proposed rate of assessment for the then current fiscal period;

(q) To investigate and to assemble data with respect to the growing, harvesting, shipping, and marketing conditions relating to peaches.

[20 FR 1635, Mar. 18, 1955. Redesignated at 26 FR 12751, Dec. 30, 1961, and amended at 42 FR 40885, Aug. 12, 1977]

§ 918.30 Procedure.

(a) The Industry Committee may, upon the selection and qualification of a majority of its members, organize and commence to function. A quorum shall consist of five (5) members or alternate members then serving in the place and stead of any members. For any decision of the Industry Committee to be valid, not less than five (5) affirmative votes shall be necessary.

(b) The Industry Committee may provide for the members thereof, including the alternates when acting as members, to vote by mail, telephone, teletypewriter, telegraph, or radiograph, and any such vote by telephone shall be confirmed promptly in writing: *Provided,* That if any assembled meeting of the committee is held, all votes shall be cast in person.

(c) The committee may adopt such rules, not inconsistent with the provisions of this subpart, relative to the method of conducting its business as it may deem advisable.

(d) The Industry Committee shall give to the Secretary or to the designated representative of the Secretary the same notice of its meetings as is given to the members thereof.

§ 918.31 Funds.

All funds received by the Industry Committee pursuant to any provision of this part shall be used solely for purposes specified in this subpart and shall be accounted for in the following manner: (a) The Secretary may, at any

time, require the committee and its members, including alternate members, to account for all receipts and disbursements; and (b) whenever any person ceases to be a member or alternate member of the committee, he shall account for all receipts and disbursements and deliver all property and funds in his hands, together with all books and records in his possession, to his successor in office or to such person as the Secretary may designate, and shall execute such assignments and other instruments as may be necessary or appropriate to vest in such successor or in such designated person the right to all the property, funds, or claims vested in such member.

EXPENSES AND ASSESSMENTS

§ 918.40 Expenses.

The Industry Committee is authorized to incur such expenses as the Secretary finds are reasonable and likely to be incurred by the committee for its maintenance and functioning and to enable it to exercise its powers and perform its duties in accordance with the provisions of this part during each fiscal period. The funds to cover such expenses shall be acquired by the levying of assessments as prescribed in § 918.41.

[42 FR 40885, Aug. 12, 1977]

§ 918.41 Assessments.

Each handler who first ships peaches shall pay upon demand, to the Industry Committee, such handler's pro rata share of the expenses which the Secretary finds are reasonable and likely to be incurred by the committee for its maintenance and functioning during each fiscal period: *Provided,* That no assessment shall be levied against peaches that are exempt from regulation pursuant to § 918.71 or against peaches that are exempt from inspection pursuant to § 918.64. Such handler's pro rata share of such expenses shall be equal to the ratio between the total assessable quantity of peaches shipped by such handler as the first shipper thereof, during the applicable fiscal period, and the total assessable quantity of peaches shipped by all handlers as the first shippers thereof during the same fiscal period.

[42 FR 40885, Aug. 12, 1977]

§ 918.42 Rate of assessment.

The Secretary shall specify the rate of assessment to be paid by such handlers.

§ 918.43 Increase in rate of assessment.

The Secretary may, at any time during or after a fiscal period, increase the rate of assessment in order to secure sufficient funds to cover any later finding by the Secretary relative to the expenses of the Industry Committee. Any such increase in the rate of assessment shall be applicable to all assessable peaches shipped during the specified fiscal period. In order to provide funds to enable the Industry Committee to perform its functions under this part, handlers may make advance payment of assessments.

§ 918.44 Accounting.

If at the end of a fiscal period the assessments collected are in excess of expenses incurred, the Industry Committee, with the approval of the Secretary, may carry over such excess into subsequent fiscal periods as a reserve up to an amount of $20,000. Such reserve funds may be used to cover any expenses authorized by this part and to cover necessary expenses of liquidation in the event of termination of this part. If any such excess is not retained in a reserve, each handler entitled to a proportionate refund shall be credited with such refund against the operations of the following fiscal period or be paid such refund. Upon termination of this part, any funds not required to defray the necessary expenses of liquidation shall be disposed of in such manner as the Secretary may determine to be appropriate: *Provided,* That, to the extent practical, such funds shall be returned pro rata to the persons from whom such funds were collected.

[42 FR 40885, Aug. 12, 1977]

§ 918.45 Suit to enforce collection.

The Industry Committee may, with the approval of the Secretary, main-

tain in its own name or in the name of its members a suit against any handler for the collection of such handler's pro rata share of expenses.

MARKETING POLICY

§ 918.48 Must be submitted prior to recommendation.

Before making any recommendation pursuant to §§ 918.60 through 918.63 for a particular marketing season, the Industry Committee shall submit to the Secretary a report setting forth the advisable marketing policy, for such season, for peaches. Such marketing policy report shall set forth the estimated regulation or regulations which may be recommended by the committee during such season, the justification therefor, and the estimates and other factors enumerated in § 918.49. In the event the committee deems it advisable to alter such marketing policy, subsequent to submitting a report thereon to the Secretary, the committee shall submit to the Secretary a report setting forth such revised marketing policy.

§ 918.49 Factors to be considered.

In determining such marketing policy, or such revised marketing policy, the Industry Committee, after due consideration, shall include in the report its determinations and estimates of the following factors and conditions: (a) The estimated total quantity of each variety of peaches available for shipment in each district during the season, including the estimated percentage of such quantity of each variety in each district which will be represented by each of the various grades and sizes; (b) the estimated date that peaches of each variety in each district will be mature and ready for shipment; (c) the estimated commercial crop of peaches produced in competing States and the expected time of shipments of peaches from such States; (d) the anticipated competition to peaches from other fruits and melons; (e) the estimated market prices and marketing conditions that are expected to prevail for peaches grown in the area; (f) the estimated harvesting and marketing costs and charges that are expected to apply to peaches grown in the area; (g) the level and trend in commodity prices and consumer purchasing power; and (h) other factors which the Industry Committee deems pertinent to the regulation of the marketing of peaches.

§ 918.50 Notice shall be given.

The Industry Committee shall promptly notify handlers and growers regarding any marketing policy report in such manner as may be reasonably expected to bring such schedules of proposed regulations, and such other information as the committee deems advisable, to the attention of all handlers and growers.

MATURITY REGULATIONS

§ 918.54 Establishment.

The Secretary shall issue an order whenever he determines that the initial Industry Committee provided for in this subpart is prepared to exercise its powers and perform its duties herein assigned, which will provide for the regulation pursuant to §§ 918.54 through 918.56 being and becoming effective at the time specified in said order. After the effective time specified in said order, issued pursuant to the provisions of this section, no handler shall ship peaches which do not meet the requirements for maturity set forth and defined in the U.S. Standards for Peaches, issued by the United States Department of Agriculture, effective April 22, 1933, or as such standards may be modified, revised, or new standards promulgated (§§ 51.1210 to 51.1223 of this title).

CROSS REFERENCE: See § 918.400 for modification of § 918.54.

§ 918.55 Modification.

The Industry Committee may recommend to the Secretary the modification of the maturity regulation provided in § 918.54 as to any or all varieties of peaches, and such recommendation should be accompanied by supporting information. If the Secretary finds, upon the basis of such recommendation and information submitted by said committee, or upon the basis of other available information, that to modify such maturity regulation as to

any or all varieties of peaches will tend to effectuate the declared policy of the act, he shall so modify such regulation. Such modification may include, but it is not necessarily limited to, a redefinition of the maturity, of any or all varieties of peaches, established pursuant to § 918.54 or the specification of a tolerance or tolerances for immature peaches. Such modification may be made applicable during a specified period. In like manner and upon the same basis, the Secretary may terminate any such modification.

§ 918.56 Suspension.

The Industry Committee may recommend to the Secretary the suspension of maturity regulation pursuant to §§ 918.54 and 918.55 and each such recommendation should be accompanied by supporting information. If the Secretary finds, upon the basis of such recommendation and information submitted by said committee, or upon the basis of other available information, that to suspend such maturity regulation will tend to effectuate the declared policy of the act, he shall suspend the operation of such maturity regulation so as to permit the shipment of peaches, the shipment of which would otherwise be prohibited pursuant to §§ 918.54 through 918.56. Such suspension may be made applicable during a specified period. In like manner and upon the same basis, the Secretary may terminate any such suspension.

REGULATION OF SHIPMENTS

§ 918.60 By grades and sizes.

(a) *Industry Committee recommendations.* Whenever the Industry Committee deems it advisable to limit the shipment of any variety or varieties of peaches, it shall recommend to the Secretary the grades or sizes, or both, thereof deemed advisable by it to be shipped during a specified period or periods; and any such recommendation may include a proposal that separate requirements be made applicable to shipments of any such variety or varieties of peaches to destinations in adjacent markets different from the proposed grade and size limitations applicable to shipments of the same variety to destinations other than in adjacent markets. At the time of submitting each such recommendation, the Industry Committee shall submit to the Secretary the supporting data and information upon which it acted in making such recommendation, and shall give consideration, among other things, to the factors required to be considered in connection with the marketing policy. The committee shall submit such other data and information as may be requested by the Secretary. The committee shall promptly give adequate notice to handlers and growers of each such recommendation submitted by it to the Secretary.

(b) *Establishment of grade and size regulations.* Whenever the Secretary finds, from the recommendation and information submitted by the Industry Committee or from other available information, that to limit the shipment of any variety or varieties of peaches to particular grades or sizes, or both, would tend to effectuate the declared policy of the act, he shall so limit the shipment of peaches during a specified period or periods; and any such regulation may prescribe separate requirements for shipments of any such variety or varieties of peaches to destinations in adjacent markets different from the grade and size limitations applicable to shipments of the same variety to destinations other than in adjacent markets. The Secretary shall immediately notify the committee of the issuance of each such regulation, and the committee shall promptly give adequate notice thereof to handlers and growers.

(c) *Safeguards.* The Industry Committee may, with the approval of the Secretary, prescribe adequate safeguards to prevent peaches that are permitted to be shipped only to destinations in adjacent markets from being shipped to destinations other than in adjacent markets.

§ 918.61 By minimum standards of quality and maturity.

(a) *Industry Committee recommendation.* Whenever the Industry Committee deems it advisable to establish minimum standards of quality or maturity, or of both quality and maturi-

ty, to govern shipments of peaches, it shall recommend to the Secretary the particular minimum standards which shipments of peaches must meet. Each such recommendation of the committee shall be in terms of (1) maturity; (2) minimum standards of quality, including but not being limited to, freedom from damage by worms and worm holes and freedom from decay, or (3) any combination or combinations of the foregoing. At the time of submitting each such recommendation to the Secretary, the Industry Committee shall also submit the supporting data and information upon which it acted in making such recommendation. The said committee shall also furnish such other data and information as may be requested by the Secretary.

(b) *Establishment of minimum standards of quality and maturity.* Whenever the Secretary finds, from the recommendation and information submitted by the Industry Committee, or from other available information, that to establish minimum standards of quality or maturity, or of both quality and maturity, for peaches and to limit the shipment of peaches to those meeting such minimum standards would be in the public interest and would tend to effectuate the declared policy of the act, he shall establish such standards, and so limit the shipment of peaches during a specified period or periods. The Secretary shall immediately notify the Industry Committee of the minimum standards so established.

§ 918.62 Exemption certificates.

In the event peaches are regulated pursuant to § 918.60 or § 918.61, the committee shall issue one or more exemption certificates to any grower who furnishes evidence satisfactory to the Industry Committee that, by virtue of conditions beyond his control, he will be prevented by reason of such regulation from having as large a proportion of a particular variety of his peaches shipped to adjacent markets or to other markets, respectively, as the average proportion of all such peaches which may be so shipped by all growers in the area. Such exemption certificate shall permit the respective grower to whom the certificate is issued to ship, or have shipped, a percentage of his crop of such variety of peaches equal to the percentage determined as aforesaid. The Industry Committee shall adopt, with the approval of the Secretary, procedural rules by which such exemption certificates will be issued to growers. Such exemption certificates may be transferred to handlers when accompanied by peaches covered by such certificates.

§ 918.63 Modification, suspension, or termination.

Whenever the Industry Committee deems it advisable to recommend the modification, suspension, or termination of any or all of the regulations established pursuant to §§ 918.60 and 918.61, it shall so recommend to the Secretary. If the Secretary finds, upon the basis of such recommendation or upon the basis of other available information, that to modify any such regulations will tend to effectuate the declared policy of the act, he shall so modify such regulations. If the Secretary finds, upon the basis of such recommendation or upon the basis of other available information, that any such regulations obstruct or do not tend to effectuate the declared policy of the act he shall suspend or terminate such regulations. The Secretary shall immediately notify the Industry Committee, and such committee shall promptly give notice to handlers and growers, of each order modifying, suspending, or terminating any such regulations. In like manner and upon the same basis the Secretary may terminate any such modification or suspension.

Inspection and Certification

§ 918.64 Inspection.

During any period in which the shipment of peaches is regulated pursuant to the provisions of this part, each handler shall, prior to making each shipment of peaches, cause each such shipment to be inspected by the Federal Inspection Service or the Federal-State Inspection Service or any other inspection service designated by the Secretary, unless such regulation provides that this requirement shall not

be applicable to any shipment of peaches in bulk to the adjacent markets: *Provided*, That this requirement shall not be applicable to any shipment of peaches which has been so inspected or which is exempt pursuant to § 918.71. Each handler shall, promptly after making each shipment of peaches, submit to the Industry Committee a copy of the inspection certificate or memorandum issued with respect to such shipment of peaches; and such certificate or memorandum shall state the maturity of the peaches in such shipment and in the event of grade regulation such certificate or memorandum shall also state the grade or grades of peaches in such shipment, and in the event of size regulation such certificate or memorandum shall also state the size or sizes of peaches in such shipment, and in the event separate requirements are in effect for shipments of peaches to destinations in adjacent markets such certificate or memorandum shall also state the composition of such shipment in terms of such requirements, and in the event of regulation by minimum standards of quality or maturity, or both, such certificate or memorandum shall also state the composition of such shipment in terms of such minimum standards. The aforesaid certificate or memorandum shall also state whether the peaches in such shipment meet the then effective requirements applicable to such shipment.

§ 918.70 Compliance of handlers.

Except as provided in § 918.71, no handler shall ship peaches, the shipment of which has been prohibited in accordance with this part; and no handler shall ship peaches except in conformity to the provisions of this part and the provisions of the regulations, if any, issued by the Secretary pursuant to the provisions of this subpart.

Peaches Not Subject to Regulation

§ 918.71 Peaches not subject to regulation.

Peaches shipped for consumption by a charitable institution or for distribution for relief purposes or for distribution by a relief agency or distribution by non-profit school lunch agencies or peaches for manufacturing, processing, canning, or conversion into by-products on a commercial scale or peaches shipped by express or parcel post, or peaches included in shipments of peaches to any person during any day by any handler if such shipments do not aggregate more than the equivalent of five (5) bushels shall be exempt from the provisions of this part. The Secretary may prescribe, on the basis of the recommendation and the information submitted by the Industry Committee, or on the basis of any other available information, adequate safeguards to prevent such peaches from entering the commercial channels of trade for consumption in fresh form.

Reports

§ 918.75 Reports.

For the purpose of enabling the Industry Committee to perform its functions and duties pursuant to the provisions of this part, each handler shall furnish to the committee such information, in such form and at such times and substantiated in such manner as shall be prescribed by the committee and approved by the Secretary, as may thus be requested by the committee with regard to each shipment of peaches.

Effective Time and Termination

§ 918.80 Effective time.

The provisions of this subpart shall become effective April 27, 1942, and shall continue in force until terminated in one of the ways specified in § 918.81.

§ 918.81 Termination.

(a) The Secretary shall terminate or suspend the operation of this part or any provision thereof whenever he finds that the part or any provision thereof does not tend to effectuate the declared policy of the act.

(b) The Secretary shall terminate the provisions of this part whenever he finds by referendum or otherwise that such termination is favored by the majority of the growers: *Provided*, That such majority has, during the current marketing season, produced

more than 50 percent of the peaches which were produced for market within the area. Such termination shall become effective on the last day of February following the announcement thereby by the Secretary.

(c) The Secretary shall conduct a referendum among growers to ascertain whether continuance of this part is favored by growers, when requested to do so by the committee, or upon the request of 6 or more growers who produced 10 percent or more of the inspected peaches shipped during the then current fiscal period: *Provided*, That such request is received prior to December 1.

(d) The provisions of this part shall, in any event, terminate whenever the provisions of the act authorizing them cease to be in effect.

[42 FR 40885, Aug. 12, 1977]

§ 918.82 Proceedings after termination.

(a) Upon the termination of the provisions of this subpart, the then functioning members of the Industry Committee shall continue as trustees, for the purpose of liquidating the affairs of the said committee, of all the funds and property then in the possession of or under control of such committee, including claims for any funds unpaid or property not delivered at the time of such termination. The procedural rules governing the activities of said trustees, including but not being limited to the determination as to whether action shall be taken by a majority vote of the trustees, shall be prescribed by the Secretary.

(b) The said trustees shall continue in such capacity until discharged by the Secretary; and shall, from time to time, account for all receipts and disbursements and deliver all property on hand, together with all books and records of the Industry Committee and of the trustees, to such person as the Secretary may direct; and shall, upon request of the Secretary, execute such assignments or other instruments necessary or appropriate to vest in such person the right to all of the funds, property, and claims vested in the committee or the trustees pursuant to this part.

(c) Any person to whom funds, property, or claims have been transferred or delivered by the Industry Committee or its members, pursuant to this section shall be subject to the same obligations imposed upon the members of said committee and upon the said trustees.

(d) Any funds collected for expenses pursuant to the provisions of this part and held by such trustees or such other person, over and above amounts necessary to meet outstanding obligations and the expenses incurred necessarily by the trustees or such other person in the performance of their duties hereunder, shall, as soon as practicable after the termination of this subpart, be returned to the handlers pro rata in proportion to their contributions made pursuant to § 918.41.

Miscellaneous Provisions

§ 918.85 Right of the Secretary.

The members of the Industry Committee, including successors and alternates thereof, and any agent or employee appointed or employed by the committee, shall be subject to removal or suspension at any time by the Secretary. Each and every order, regulation, determination, decision or other act of each committee provided for in this part shall be subject to the continuing right of the Secretary to disapprove of such order, regulation, decision, determination, or other act, and upon such disapproval, at any time, such action by a committee shall be deemed null and void except as to acts done in reliance thereon or in compliance therewith prior to such disapproval by the Secretary.

§ 918.86 Duration of immunities.

The benefits, privileges, and immunities conferred upon any person by virtue of this part shall cease upon the termination hereof, except with respect to acts done under and during the existence of this subpart.

§ 918.87 Agents.

The Secretary may, by designation in writing, name any person, including any officer or employee of the Government, or name any bureau or division in the United States Department

of Agriculture to act as his agent or representative in connection with any of the provisions of this part.

§ 918.88 Derogation.

Nothing contained in this part is, or shall be construed to be, in derogation or in modification of the rights of the Secretary or of the United States to exercise any powers granted by the act or otherwise, or, in accordance with such powers, to act in the premises whenever such action is deemed advisable.

§ 918.89 Personal liability.

No member or alternate of said Industry Committee, nor any employee thereof, shall be held personally responsible, either individually or jointly with others, in any way whatsoever, to any handler or to any person for errors in judgment, mistakes, or other acts, either of commission or omission, as such member, alternate, or employee, except for acts of dishonesty.

§ 918.90 Separability.

If any provision of this part is declared invalid, or the applicability thereof to any person, circumstance, or thing is held invalid, the validity of the remainder of this part, or the applicability thereof to any other person, circumstance, or thing, shall not be affected thereby.

§ 918.91 Amendments.

Amendments to this subpart may be proposed, from time to time, by the Industry Committee or by the Secretary.

§ 918.92 Effect of termination or amendment.

Unless otherwise expressly provided by the Secretary, the termination of this subpart or of any regulation issued pursuant thereto, or the issuance of any amendment to either thereof, shall not (a) affect or waive any right, duty, obligation, or liability which shall have arisen prior thereto, or (b) release or extinguish any violation of this subpart or of any regulation issued hereunder, or (c) affect or impair any right or remedy of the United States, or of the Secretary or of any other person with respect to any such violation.

Subpart—Industry Committee Regulations

SOURCE: 16 FR 3402, Apr. 19, 1951, unless otherwise noted. Redesignated at 26 FR 12751, Dec. 30, 1961.

DEFINITIONS

§ 918.100 Terms.

Terms used in this subpart shall have the same meaning as when used in the marketing agreement and order (§§ 918.1 to 918.92).

§ 918.101 Order.

"Order" means Order No. 918, as amended (§§ 918.1 to 918.92), regulating the handling of fresh peaches grown in the State of Georgia.

§ 918.102 Marketing agreement.

"Marketing agreement" means Marketing Agreement No. 99, as amended, regulating the handling of fresh peaches grown in the State of Georgia.

§ 918.103 Adjacent market peaches.

"Adjacent market peaches" means peaches which, in accordance with a regulation issued pursuant to § 918.60(b), are permitted to be shipped only to destinations in adjacent markets.

COMMUNICATIONS AND NOTICES

§ 918.105 Communications.

Unless otherwise provided in the marketing agreement and order or by specific direction of the Industry Committee, all communications (including, but not being limited to, reports, applications, submittals, and requests) in connection with the marketing agreement and order shall be addressed to Industry Committee, P.O. Box 1239, Macon, Georgia.

§ 918.106 Notices.

The following newspapers are designated for the giving of notice as required by the marketing agreement and order §§ 918.1 to 918.92:

Atlanta Journal, Atlanta, Ga.

Macon Telegraph, Macon, Ga.

[19 FR 3644, June 19, 1954. Redesignated at 26 FR 12751, Dec. 30, 1961]

DISTRICT REPRESENTATIVE

§ 918.112 Qualification requirements and nomination procedure for public members of the Industry Committee.

(a) Public members shall not have a financial interest in or be associated with the production, processing, financing, or marketing (except as consumers) of Georgia peaches.

(b) Public members should be able to devote sufficient time and express a willingness to attend committee activities regularly, and become familiar with the background and economics of the industry.

(c) Public members must be residents of Georgia.

(d) Public members should be nominated by the committee prior to December 31 of each year, and should serve a 1-year term which coincides with the term of office of other members of the committee

[43 FR 47486, Oct. 16, 1978]

REGULATION OF SHIPMENTS

§ 918.120 Adjacent market peaches, shipments of.

During each period when a grade or size regulation is in effect pursuant to § 918.60(b) and prescribes separate requirements for shipments of adjacent market peaches, such shipments may be effected only if the adjacent market peaches are shipped in bulk (i.e., loose in the body of a truck, trailer, or other conveyance, or loose in containers, without being place-packed or ring-faced, and without liners or cushions).

§ 918.121 Exemption certificates.

(a) *Application.* Each application pursuant to § 918.62 (*Exemption certificates*) for an exemption certificate to ship peaches of a particular variety shall be submitted to the Industry Committee on form "Grower Application for Exemption Certificate." Such form may be obtained from the Industry Committee; and the completed application shall contain the following information:

(1) Name and address of the applicant; and date;

(2) Variety of peaches for which exemption is requested;

(3) District in which the orchard where such peaches are grown is located;

(4) Location (by county highway, rural route, distance from nearest town, etc.) of each of applicant's orchards of such variety in such district;

(5) Number and age of trees of the stated variety;

(6) Regulations from which exemption is requested;

(7) Estimated current crop (both harvested and unharvested) of such variety of peaches in such detail as required by the form of application for an exemption certificate;

(8) Estimated percentage of the aforesaid crop not meeting the requirements of the grade regulation then in effect and the reasons therefor;

(9) Estimated percentage of the aforesaid crop not meeting the minimum size requirements of the size regulation then in effect and the reasons therefor; and

(10) The aggregate number of bushels of the aforesaid crop which the applicant already (i) has shipped, and (ii) has had shipped for him.

(b) *Issuance of exemption certificate; non-issuance.* In the event the Industry Committee finds and determines, from proof satisfactory to the committee, that the applicant is entitled to an exemption certificate, the committee shall issue, or authorize the issuance of, an exemption certificate which shall permit the applicant to ship or have shipped the requisite quantity, as provided in § 918.62, of the particular variety of peaches. If the committee finds and determines that the applicant is not entitled to an exemption certificate, it shall so advise the applicant in writing, and give the reasons therefor.

(c) *Shipments pursuant to an exemption certificate.* Each grower who ships, or has shipped, any portion of his crop of such variety pursuant to an exemption certificate shall report the respective shipment promptly to the Industry Committee.

§ 918.122 Shipments by truck.

Each handler who ships peaches in a truck during any period in which a regulation is in effect pursuant to § 918.54, § 918.55, § 918.60, or § 918.61 shall keep and maintain in the truck, until the shipment has been completed, a copy of the certificate or memorandum issued by the Federal Inspection Service or the Federal-State Inspection Service or any other inspection service designated by the Secretary, as the case may be, with regard to the respective shipment of peaches: *Provided*, That this requirement shall not apply to shipments of peaches in bulk to adjacent markets during periods when such shipments are exempt from inspection. Each such handler shall upon demand by an authorized agent or employee of the Industry Committee or any authorized agent or employee of the United States Department of Agriculture, make such copy of the certificate or memorandum available for examination by such agent or employee.

[19 FR 3644, June 19, 1954. Redesignated at 26 FR 12751, Dec. 30, 1961]

REPORTS AND SAFEGUARDS

§ 918.130 Peaches shipped to adjacent markets.

Each handler who ships, in closed containers, adjacent market peaches which do not meet the current regulations for nonadjacent markets issued pursuant to § 918.60(b) shall stamp or print on the ends or sides of such containers in letters not less than one-half inch in height "For Sale In Adjacent Markets Only", along with the handler's name and address; and have such fruit so shipped inspected as provided in § 918.64.

[44 FR 25403, May 1, 1979]

§ 918.131 Peaches not subject to regulation.

Each handler who ships peaches (except peaches shipped by express or parcel post, or peaches included in shipments of peaches to any person during any day by any handler if such shipments do not aggregate more than the equivalent of five (5) bushels) pursuant to § 918.71 shall report promptly to the Industry Committee, on forms provided by that committee, the following information with respect to each such shipment:

(a) Name and address of the handler; date;

(b) Shipping point;

(c) Name and address of consignee; destination;

(d) Truck license number, trailer license number, car initials and number; or other identification of the conveyance in which shipment was made;

(e) Signature of truck driver;

(f) Number and kind of containers;

(g) Total net weight of, or total number of bushels in, the shipment;

(h) Purpose for which shipped; and

(i) A certification that the information is complete and accurate.

NOTE: After January 1, 1979, "Budget of Expenses and Rate of Assessment" regulations (e.g. sections .200 through .299) and "Handling" regulations (e.g. sections .327 through .399) which are in effect for a year or less, will not be carried in the Code of Federal Regulations. For FEDERAL REGISTER citations affecting these regulations, see the "List of CFR Sections Affected" in this volume.

§ 918.325 Peach Regulation 3.

On and after May 1, 1985, no handler shall ship peaches unless such peaches are mature as provided in § 918.400, and are not smaller than 1⅝ inches in diameter, except that not more than 10 percent, by count, of such peaches in any lot, and not more than 15 percent, by count, of such peaches in any container in such lot, may be smaller than 1⅝ inches in diameter: *Provided*, That peaches shipped to adjacent markets in bulk are exempt from such maturity and size requirements, and the inspection requirement in § 918.64 shall not apply.

[50 FR 19322, May 8, 1985]

§ 918.326 Georgia Peach Regulation 3.

(a) On and after June 8, 1984:

(1) *Nonadjacent markets:* No handler shall ship peaches to destinations in other than adjacent markets unless such peaches grade at least 85 percent U.S. No. 1 quality, except for bacterial spots and sprayburn not scored as seri-

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ous damage, well-healed hail marks and split pits, and not more than 1 percent decay: *Provided,* That such peaches are a least 1⅞ inches in diameter, except that the minimum diameter requirement is 1¾ inches for peaches grading at least U.S. Extra No. 1. *Provided further,* That the maturity requirements in § 918.400 are suspended for all such nonadjacent market shipments.

(2) *Adjacent markets:* No handler shall ship peaches to destinations in adjacent markets unless such peaches meet the grade and size requirements specified in paragraph (a)(1) of this section: *Provided,* That peaches shipped to adjacent markets in closed containers marked as specified in § 918.130 are exempt from such grade and size requirements if they are at least 1¾ inches in diameter. *Provided further,* That peaches shipped to adjacent markets in bulk are exempt from all such grade and size requirements, and the inspection requirement in § 918.64 shall not apply.

(3) *Size tolerances:* Size tolerances applicable to the minimum size requirements specified in this section are as follows: Not more than 10 percent, by count, of such peaches in any bulk lot or any lot of packages, and not more than 15 percent, by count, of such peaches in any container in such lot, may be smaller than the minimum size specified.

(b) "U.S. No. 1", U.S. Extra No. 1, and "diameter" mean the same as defined in the United States Standards for Peaches (7 CFR 51.1210-51.1223).

[49 FR 24510, June 14, 1984 and 49 FR 35341, Sept. 7, 1984]

Subpart—Maturity Regulations

§ 918.400 Maturity regulations.

(a) Unless otherwise indicated, terms used in this subpart shall have the same meaning as when used in the marketing agreement and order (§§ 918.1 to 918.92).

(b) The regulatory provisions in § 918.54 are modified as follows: No handler shall ship peaches which do not meet the requirements for maturity set forth and defined in the U.S. Standards for Peaches (§§ 51.1210 to 51.1223 of this title) or as such standards may be modified, revised, or new standards promulgated: *Provided,* That not more than an average of 10 percent, by count, of the peaches contained in any bulk lot or in any lot of packages may fail to meet the said requirements for maturity, but not more than 15 percent, by count, of the peaches contained in any individual package in any lot may fail to meet the said requirements for maturity.

[16 FR 3403, Apr. 19, 1951. Redesignated at 26 FR 12751, Dec. 30, 1961]

PART 919—PEACHES GROWN IN MESA COUNTY, COLO.

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AUTHORITY: Secs. 1-19, 48 Stat. 31, as amended; 7 U.S.C. 601-674.

Subpart—Order Regulating Handling

SOURCE: 21 FR 9095, Nov. 22, 1956, unless otherwise noted. Redesignated at 26 FR 12751, Dec. 30, 1961.

DEFINITIONS

§ 919.1 Secretary.

"Secretary" means the Secretary of Agriculture of the United States of America.

§ 919.2 Act.

"Act" means Public Act No. 10, 73d Congress (May 12, 1933), as amended and as reenacted and amended by the Agricultural Marketing Agreement Act of 1937, as amended (48 Stat. 31, as amended; 7 U.S.C. 601 et seq.; 68 Stat. 906, 1047).

§ 919.3 Person.

"Person" means an individual, partnership, corporation, association, legal representative, or any organized group of individuals.

§ 919.4 Peaches.

"Peaches" means all peaches grown in the county of Mesa in the State of Colorado.

§ 919.5 Committee.

"Committee" means the Administrative Committee established pursuant to the provisions of this subpart.

§ 919.6 Producer.

"Producer" means any person engaged in growing peaches in the county of Mesa in the State of Colorado for market.

§ 919.7 Handler.

"Handler" means any person (except a common or contract carrier of peaches owned by another person) who, as owner, agent, or otherwise, ships peaches, or causes peaches to be shipped.

§ 919.8 Varieties.

"Varieties" means and includes all classifications and subdivisions, including customary and trade names thereof, of peaches according to those definitive characteristics now or hereaf-

ter recognized by the United States Department of Agriculture or the Colorado State Department of Agriculture, or such groupings of peaches according to such characteristics or types as may be established by the committee with the approval of the Secretary.

§ 919.9 Ship.

"Ship" means to sell, transport, offer for transportation, or ship peaches in fresh form by rail, truck, or any other means whatsoever in the current of commerce between the State of Colorado and any point outside thereof.

§ 919.10 Fiscal period.

"Fiscal period" is synonymous with "fiscal year" and means the 12-month period beginning on November 1 and ending on October 31 of the following year, or such other period that may be approved by the Secretary pursuant to recommendations by the committee: *Provided,* That the fiscal year which began on March 1, 1969, shall end on October 31, 1969.

[34 FR 13263, Aug. 15, 1969]

§ 919.11 District.

"District" means the applicable one of any of the following described subdivisions of the county of Mesa in the State of Colorado:

(a) "District No. 1" shall include all that portion of Mesa County lying north of the Colorado River and east of 37.3 Road and an extension thereof to the Mesa County line.

(b) "District No. 2" shall include all that portion of Mesa County lying south of the Colorado River and east of 36⅝ Road and an extension thereof to the Mesa County line.

(c) "District No. 3" shall include all that portion of Mesa County lying south of the Colorado River bordered on the east by 36⅝ Road, and an extension thereof to the Mesa County line, and bordered on the west by 35 Road, and an extension thereof to the Mesa County line.

(d) "District No. 4" shall be all that portion of Mesa County lying south of the Colorado River bordered on the west by the Gunnison River and bordered on the east by 35 Road, and an extension thereof to the Mesa County line.

(e) "District No. 5" shall be all that portion of Mesa County west of 37.3 Road and an extension thereof to the Mesa County line, north of the Colorado River to the junction of the Colorado River and the Gunnison River, and all the rest of Mesa County west and north of the junction of the Colorado and Gunnison Rivers.

[34 FR 13263, Aug. 15, 1969]

Administrative Committee

§ 919.20 Establishment and membership.

An Administrative Committee is hereby established consisting of nine members, each of whom shall have an alternate. Five of the members, one for each district, shall represent producers; three of the members shall represent cooperative associations that are handlers; and one of the members, referred to in this part as "independent" member, shall represent producers and handlers other than cooperative associations and members of such associations. The members of the committee and their respective alternates shall be nominated, in accordance with the provisions of §§ 919.21 through 919.24, at least 30 days prior to the beginning of the term of office for which nominations are being made.

[21 FR 9095, Nov. 22, 1956. Redesignated at 26 FR 12751, Dec. 30, 1961, and amended at 34 FR 13263, Aug. 15, 1969]

§ 919.21 Nomination and selection of producer members.

(a) Nomination of producer members and their respective alternates shall be made at meetings of producers for each such district, at such times and places as the Administrative Committee shall designate. At each such meeting, the producers eligible to participate therein shall select a chairman and a secretary therefor. In the election of nominees, each producer shall be entitled to vote in accordance with the provisions of paragraph (b) of this section. The chairman of each meeting shall announce at such meeting the name of each person for whom votes have been cast, and the number of

votes cast for each such person; and the chairman or the secretary of the meeting shall forthwith transmit such information to the Secretary.

(b) Only producers shall participate in the nomination of producer members and their alternates, and a producer may participate only in the meeting held for the district in which he produces peaches. No producer shall participate in the nomination of producer members and their alternates for more than one district in any fiscal year. Each producer shall be entitled to cast but one vote on behalf of himself, his agents, partners, and representatives. Proxy voting shall be prohibited.

(c) At least twice as many persons shall be nominated as there are positions to be filled. Such nominees shall be ranked in the order of votes cast for each, and such ranking shall determine their standing in the order of importance of the positions to be filled. Member positions shall be considered of first importance. The Secretary shall select one member and one alternate from the nominees thus elected and ranked.

[21 FR 9095, Nov. 22, 1956. Redesignated at 26 FR 12751, Dec. 30, 1961, and amended at 34 FR 13263, Aug. 15, 1969]

§ 919.22 Nomination and selection of independent member.

(a) Nomination of an independent member and his alternate shall be made at a meeting of producers and handlers other than cooperative associations or members of such associations, at such time and place as the Administrative Committee shall designate. At each such meeting, the persons eligible to participate therein shall select a chairman and a secretary therefor.

(b) Only producers and handlers who are not cooperative associations nor members of such associations shall be eligible to participate in the nomination of the independent member and his alternate. Proxy voting shall be prohibited, but independent handlers having permanent facilities in Mesa County for the handling of peaches and having bona fide agents designated for carrying on business activities for such handlers may be represented at such nomination meetings by such agents and such agents may vote and be nominated; and, in a similar manner, such handlers may designate employees who may vote and be nominated. In the election of nominees for the independent member and his alternate, each person eligible to participate therein shall be entitled to cast but one vote on behalf of himself, his agents, partners, affiliates, subsidiaries, and representatives. The Administrative Committee with the approval of the Secretary, may make rules and regulations defining permanent facilities and what shall constitute bona fide agents and employees for the purposes of this section, and in like manner may change such rules and regulations from time to time.

(c) At least twice as many persons shall be nominated as there are positions to be filled. Such nominees shall be ranked in the order of the votes cast, and such ranking shall determine their standing in the order of importance of the positions to be filled. Member positions shall be considered of first importance. The Secretary shall select a member and an alternate member from the nominees thus elected and ranked.

(d) The chairman of the meeting shall announce at such meeting the name of each person for whom votes have been cast, and the number of votes cast for each such person; and the chairman or the secretary of the meeting shall forthwith transmit such information to the Secretary.

[21 FR 9095, Nov. 22, 1956. Redesignated at 26 FR 12751, Dec. 30, 1961, and amended at 34 FR 13263, Aug. 15, 1969]

§ 919.23 Nomination and selection of cooperative handler members.

(a) Each of the two cooperative associations qualifying as a handler during the fiscal year, shall be entitled to nominate one member and one alternate member of the committee; and, in alternate years, each such association shall make an additional nomination for either a member or alternate member. The cooperative association represented by two cooperative handler members during the fiscal year, shall nominate one member and two

alternates for the next succeeding fiscal year. The cooperative association represented by one cooperative handler member during the fiscal year, shall nominate two members and one alternate for the next succeeding fiscal year.

(b) Nomination of cooperative members and their respective alternates shall be made by such cooperative associations in such manner as the members of the respective associations may designate.

(c) At least twice as many persons shall be nominated as there are positions to be filled. Such nominees shall be ranked in the order of votes cast for each, and such ranking shall determine their standing in the order of importance of the positions to be filled. Member positions shall be considered of first importance. The Secretary shall select the required number of members and alternates from the nominees thus elected and ranked.

(d) The chairman of each meeting shall announce at such meeting the name of each person for whom votes have been cast, and the number of votes cast for each such person; and the chairman or the secretary of such meeting shall forthwith transmit such information to the Secretary.

(e) The committee, with the approval of the Secretary, may provide for the reapportionment of the cooperative handler membership of the committee so as to more equitably provide representation to present and future cooperative associations engaged in handling Mesa County peaches should the need for such reapportionment of present cooperative handler positions arise. Any such reapportionment should be based, so far as practicable, upon the volume of peaches handled by the respective associations.

[21 FR 9095, Nov. 22, 1956. Redesignated at 26 FR 12751, Dec. 30, 1961, and amended at 34 FR 13263, Aug. 15, 1969]

§ 919.24 Eligibility for membership.

(a) Producer members of the Administrative Committee and alternates for such members must be producers of peaches in the district in and for which they are nominated and selected.

(b) A handler member of the Administrative Committee and an alternate for such member, to be selected from the nominees of cooperative associations, must be a member or an employee of a cooperative association.

(c) The independent member of the Administrative Committee and the alternate for such member to be selected from the nominees of producers and handlers other than cooperative associations and members of such associations must be a producer or handler (including employees and bona fide agents designated for carrying on business activities for such handler) and shall not be a member or an employee of a cooperative association.

§ 919.25 Failure to nominate.

In the event nominations, subsequent to the selection by the Secretary of the initial members and their respective alternates, are not made and the names of such nominees are not submitted to the Secretary not later than 15 days prior to the beginning of the term of office, pursuant to §§ 919.22 and 919.23, the Secretary may select such members and alternates without regard to nominations.

[21 FR 9095, Nov. 22, 1956. Redesignated at 26 FR 12751, Dec. 30, 1961, and amended at 34 FR 13264, Aug. 15, 1969]

§ 919.26 Qualification by members and alternates.

Any person selected by the Secretary as a member or as an alternate for a member of the Administrative Committee shall qualify therefor by filing a written acceptance thereof with the Secretary within 15 days after being notified of such selection.

§ 919.27 Term of office.

(a) The term of office of producer members and their alternates shall be for two (2) years: *Provided*, That, for the term beginning January 1, 1970, the term of office of two producer members and their alternates shall be for 1 year. (Determination of which of the initial producer members and their alternates shall serve for 1 year, or 2 years, shall be by lot.) The term of office of the independent member and cooperative handler members, and

of their alternates, shall be one (1) year. The term of office of each member and alternate member shall be for the period beginning on January 1 of 1 year and ending on December 31 of the same year, or the following year in the case of producer members and their alternates, both dates inclusive, or such other period as the committee, with the approval of the Secretary, may prescribe: *Provided,* That the term of office which began March 1, 1969, shall end December 31, 1969.

(b) Members and alternates shall serve during the term of office for which they have been selected and have qualified and until their successors are selected and have qualified.

[34 FR 13264, Aug. 15, 1969]

§ 919.28 Alternate members of Administrative Committee.

An alternate for a member shall act in the place and stead of such member during such member's absence, or, in the event of the death, removal, resignation, or disqualification of such member, until a successor for such member is selected and has qualified.

§ 919.29 Vacancies.

To fill any vacancy occasioned by the failure to qualify of any person selected as a member or as an alternate for a member of the Administrative Committee, or, in the event of the death, removal, resignation, or disqualification of any member or of any alternate, nomination and selection to fill such vacancy shall be made in the manner set forth in §§ 919.20 to 919.35. If nominations to fill such vacancy are not made or the names of such nominees are not submitted to the Secretary within 20 days after such vacancy occurs, the Secretary may fill such vacancy without regard to nomination.

§ 919.30 Compensation and expenses.

The members and alternate members of the Administrative Committee shall serve without salary but may be compensated for attendance at meetings at a rate not to exceed $5.00 per meeting plus mileage at not to exceed 10 cents per mile. Such members and alternates also may be reimbursed for reasonable expenses necessarily incurred by them in the performance of duties, specifically assigned by the committee, other than attendance at meetings.

§ 919.31 Powers.

The Administrative Committee shall have the following powers:

(a) To administer, as specifically provided in §§ 919.20 to 919.35, the terms and provisions of this part;

(b) To make administrative rules and regulations in accordance herewith and to effectuate the terms and provisions of this part;

(c) To receive, investigate, and report to the Secretary complaints of violations of this part; and

(d) To recommend to the Secretary amendments to this part.

§ 919.32 Duties.

The duties of the Administrative Committee shall be as follows:

(a) To act as intermediary between the Secretary and any producer or handler;

(b) To keep minutes, books, and records which will clearly reflect all of the acts and transactions of the Administrative Committee, which minutes, books, and records shall be subject at any time to examination by the Secretary;

(c) To study and assemble data on the growing, shipping, and marketing conditions respecting peaches;

(d) Each season prior to making any recommendation to the Secretary for the regulation of shipments pursuant to the provisions of this part, to determine the marketing policy to be followed during such season and to submit to the Secretary a report thereon containing, among other provisions, information relative to the estimated total production of peaches; information as to the expected grades and sizes of such peaches; possible or expected demand conditions of different market outlets; supplies of competitive commodities; an appropriate analysis of the foregoing factors and conditions; and the type of regulation of shipments of peaches expected to be recommended;

(e) To furnish to the Secretary such available information as the Secretary requests;

(f) To perform such duties as may be assigned to it from time to time by the Secretary in connection with the administration of section 32 of the act to amend the Agricultural Adjustment Act, and for other purposes, Public Act, No. 320, 74th Congress (49 Stat. 774), August 24, 1935, as amended;

(g) To consult, cooperate, and exchange information with committees administering other marketing agreements and orders, with other governmental agencies, and with industry groups in connection with all proper committee activities and objectives under this part.

(h) To cause the books of the Administrative Committee to be audited by one or more competent accountants at least once each fiscal year and at such other times as the committee may deem necessary or as the Secretary may request, and to file with the Secretary copies of any and all audit reports;

(i) To appoint such employees as it may deem necessary, and to determine the salaries and define the duties of such employees;

(j) To give the Secretary the same notice of meetings of the Administrative Committee as is given to the members of the committee; and

(k) To select a chairman of the Administrative Committee and, from time to time, such other officers as it may deem advisable.

(l) With the approval of the Secretary, to redefine the districts into which the production area is divided and to reapportion the representation of any district on the committee: *Provided*, That any such changes shall reflect, insofar as practicable, shifts in peach production within the districts and the production area.

[21 FR 9095, Nov. 22, 1956. Redesignated at 26 FR 12751, Dec. 30, 1961, and amended at 34 FR 13264, Aug. 15, 1969]

§ 919.33 Procedure.

A quorum shall consist of six members of the Administrative Committee, or alternates then serving in the place and stead of any members, in attendance at a meeting, and all decisions of the committee shall be made by not less than six affirmative votes.

§ 919.34 Rights of the Secretary.

The members of the Administrative Committee, including successors and alternates, and any agent or employee appointed or employed by the committee shall be subject to removal or suspension by the Secretary for cause at any time. Each and every regulation, decision, determination, or other act of the committee shall be subject to the continuing right of the Secretary to disapprove of the same at any time and, upon such disapproval, shall be deemed null and void except as to acts done in reliance thereon or in compliance therewith prior to such disapproval by the Secretary.

§ 919.35 Funds and other property.

(a) All funds received by the Administrative Committee pursuant to any of the provisions of this part shall be used solely for the purposes specified in this part, and the Secretary may require the committee and its members to account for all receipts and disbursements.

(b) Upon the death, resignation, removal, or expiration of the term of office of any member of the Administrative Committee, all books, records, funds, and other property in his possession shall be delivered to his successor in office or to the committee, and such assignments and other instruments shall be executed as may be necessary to vest in his successor or in the committee full title to all the books, records, funds, and other property in the possession or under the control of such member pursuant to this part.

Expenses and Assessments

§ 919.40 Expenses.

The Administrative Committee is authorized to incur such expenses as the Secretary finds are reasonable and likely to be incurred by such committee for its maintenance and functioning under this part during the then current fiscal year. The committee shall prepare, and submit to the Secretary, a proposed budget of expenses

and a proposed rate of assessment for the then current fiscal year. The funds to cover such expenses shall be acquired by the levying of assessments as provided in § 919.41.

§ 919.41 Assessments.

Each handler shall pay to the Administrative Committee, upon demand, such handler's pro rata share of the aforesaid expenses. Each handler's pro rata share shall be based upon a rate of assessment fixed by the Secretary and shall be that proportion of such expenses which the total quantity of peaches shipped during a fiscal year by such handler as the first handler thereof is of the total quantity of peaches shipped by all handlers as the first handlers thereof, during the same fiscal year. The rate of assessment may be increased, from time to time during any fiscal year, by the Secretary in order to cover any later finding by the Secretary of the estimated or actual expenses of the committee for said fiscal year. Each such increase shall be applicable to all assessable peaches shipped during such fiscal year.

§ 919.42 Accounting.

If, at the end of a fiscal period, the assessments collected are in excess of expenses incurred, the committee, with the approval of the Secretary, may carry over such excess into subsequent fiscal periods as a reserve: *Provided,* That funds already in the reserve do not exceed approximately two fiscal periods' expenses. Such reserve funds may be used (a) to cover any expenses authorized by this part, and (b) to cover necessary expenses of liquidation in the event of termination of this part. If any such excess is not retained in a reserve, it shall be refunded proportionately, if practicable, to the handlers from whom the excess was collected. Upon termination of this part, any funds not required to defray the necessary expenses of liquidation shall be disposed of in such manner as the Secretary may determine to be appropriate: *Provided,* That to the extent practical, such funds shall be returned pro rata to the persons from whom such funds were collected.

[34 FR 13264, Aug. 15, 1969]

§ 919.43 Suit to enforce collection.

The Administrative Committee may, with the approval of the Secretary, maintain a suit in its own name or in the names of its members for the collection of any handler's pro rata share of expenses.

REGULATION OF SHIPMENTS

§ 919.50 Regulation of shipments.

Whenever the Administrative Committee deems it advisable to regulate, during any period or periods, the shipment of one or more varieties of peaches by grades or sizes, or both, or by minimum standards of quality or maturity, or both, it shall so recommend to the Secretary.

§ 919.51 Recommendation of the Administrative Committee.

(a) At the time of submitting each such recommendation for the regulation by grades or sizes, or both, the committee shall furnish to the Secretary, in addition to all pertinent data and information on which it acted in making such recommendation, such other data and information as the Secretary may request. The committee shall promptly give adequate notice to handlers and producers of each such recommendation.

(b) At the time of submitting each such recommendation for the regulation by minimum standards of quality or maturity, or both, the committee shall furnish to the Secretary, in addition to all pertinent data and information on which it acted in making such recommendation, such other data and information as the Secretary may request. Each such recommendation of the committee should, so far as it is practical, be in terms of such grades or sizes, or both, of peaches as would be in the public interest and tend to effectuate the declared policy of the act.

§ 919.52 Establishment of regulation.

(a) *By grades and sizes.* Whenever the Secretary finds, from any such recommendations, and information or other available information, that to limit the shipment of the total quantity of any variety or varieties of peaches to particular grades or sizes, or

both, thereof would tend to effectuate the declared policy of the act, he shall so limit the shipment of such variety or varieties during a specified period or periods. The Secretary shall promptly notify the committee of each such regulation; and the committee shall promptly give adequate notice thereof to handlers and producers.

(b) *By minimum standards of quality and maturity.* Whenever the Secretary finds, from any such recommendation and information or other available information, that to establish minimum standards of quality or maturity, or both, and to limit the shipment of any variety or varieties of peaches during any period or periods to those meeting such minimum standards would be in the public interest and would tend to effectuate the declared policy of the act, he shall so limit the shipment of such variety or varieties during a specified period or periods. The Secretary shall promptly notify the committee of each such regulation; and the committee shall promptly give adequate notice thereof to handlers and producers.

§ 919.53 Exemptions and exemption certificates.

(a) The Administrative Committee shall, subject to the approval of the Secretary, adopt procedural rules to govern the issuance of exemption certificates.

(b) In the event the Secretary issues a regulation pursuant to § 919.52, the committee shall determine the percentage which each variety of peaches permitted to be shipped under the regulation bears to the total production of such variety; and the committee shall forthwith announce such percentage. The committee shall thereafter issue one or more exemption certificates to any producer who furnishes evidence satisfactory to the committee that, by reason of conditions beyond the control of a prudent grower and beyond his reasonable expectations, he will be prevented because of the regulation issued from shipping or having shipped as large a proportion of a particular variety of his peaches as the average proportion of all such peaches which may be so shipped. Causes regarded as within the control of a prudent grower include, but are not necessarily limited to, failure properly and adequately to prune, irrigate, thin, fertilize, spray, and cultivate according to accepted practices. Causes regarded as beyond the control of a prudent grower and beyond his reasonable expectation include, but are not necessarily limited to, exceptionally late spring and early frosts, ditch breaks, water shortages, general shortage of labor during the growing season, or illness of a kind causing inability to carry out the management of his crop in the manner of a prudent grower.

(c) The committee, with the approval of the Secretary, may include in the rules and regulations adopted pursuant to paragraph (a) of this section such refinement of definition as is deemed necessary with respect to causes beyond the control of a prudent grower and beyond a grower's reasonable expectation.

(d) The exemption certificates issued pursuant to this section shall permit the respective grower to whom the certificate is issued to ship or have shipped a percentage of his crop of a particular variety of peaches equal to the percentage determined pursuant to paragraph (b) of this section; but such exemption may be limited to the specific damage by reason of which the exemption is claimed, and the committee may establish special requirements with respect to the minimum grade, quality, size, and maturity which must be met by peaches shipped under such certificates.

(e) If any producer is dissatisfied with the action of the Administrative Committee taken with respect to his application for an exemption certificate, such producer may appeal to the Secretary. The Secretary may, upon any appeal made as aforesaid, modify or reverse the action of the committee. The authority of the Secretary to supervise and control the issuance of exemption certificates is unlimited and plenary; and any determination by the Secretary with respect to an exemption certificate shall be final and conclusive.

(f) The Administrative Committee shall, from time to time, submit to the

Secretary reports stating in detail the number of exemption certificates issued, the quantity of peaches thus exempted, and such additional information as may be requested by the Secretary.

§ 919.54 Inspection and certification.

Prior to making each shipment of peaches during any period in which the shipment of peaches is regulated pursuant to § 919.52, each handler shall, if the respective shipment has not theretofore been so inspected, have such shipment inspected by an authorized representative of the Federal-State Inspection Service, or such other inspection service as the Secretary may designate. Promptly thereafter, such handler shall submit, or cause to be submitted, to the Administrative Committee a copy of the inspection certificate issued with respect to such shipment.

§ 919.55 Modification, suspension, or termination.

Whenever the Administrative Committee deems it advisable to recommend to the Secretary the modification, suspension, or termination of any or all of the regulations issued pursuant to § 919.52, it shall so recommend to the Secretary. If the Secretary finds, upon the basis of such recommendation or other available information, that to modify any such regulation will tend to effectuate the declared policy of the act, he shall so modify such regulation. If the Secretary finds, upon the basis of such recommendation or other available information, that any such regulation obstructs or does not tend to effectuate the declared policy of the act, he shall suspend or terminate such regulation. The Secretary shall promptly notify the committee, and the committee shall promptly give adequate notice to handlers and producers, of each such modification, suspension, and termination. In like manner and upon the same basis the Secretary may terminate any such modification or suspension.

RESEARCH AND DEVELOPMENT

§ 919.60 Marketing research and development.

The committee, with the approval of the Secretary, may provide for the establishment of marketing research and development projects designed to assist, improve, or promote the marketing, distribution, and consumption of peaches. In a similar manner any such project may be modified, suspended, or terminated.

REPORTS AND LIABILITY

§ 919.65 Reports.

Upon the request of the Administrative Committee, made with the approval of the Secretary, each handler shall furnish the committee, in such manner and at such times as it prescribes, such information as will enable it to exercise its powers and to perform its duties under this part.

§ 919.66 Liability of Administrative Committee members.

No member, alternate member, or employee of the Administrative Committee shall be held liable, either individually or jointly with others, in any way whatsoever, to any handler or to any other person for errors in judgment, mistakes, or other acts, either of commission or omission, as such member, alternate member, or employee, except for acts of dishonesty.

COMPLIANCE AND EXCEPTIONS

§ 919.70 Compliance.

Except as otherwise specifically provided in this part, no person shall ship peaches, the shipment of which has been prohibited by the Secretary in accordance with the provisions of this part.

§ 919.71 Peaches not subject to regulation.

Nothing contained in this part shall be construed to authorize any limitation of the right of any person to ship (a) peaches for consumption by a charitable institution or for distribution for relief purposes or for distribution by a relief agency; (b) peaches for processing on a commercial scale; or

(c) peaches to any one person during any one day if such peaches are not for resale and do not aggregate more than 19 bushels. The inspection and assessment provisions of this subpart shall not be applicable to peaches so shipped. The Administrative Committee may prescribe adequate safeguards to prevent peaches, shipped for such purposes, from entering commercial channels of trade contrary to the provisions of this part.

EFFECTIVE TIME AND TERMINATION

§ 919.80 Effective time.

The provisions of this part shall become effective August 15, 1939, and shall continue in force until terminated in one of the ways specified in § 919.81.

§ 919.81 Termination.

(a) The Secretary may at any time terminate the provisions of this part by giving at least 1 day's notice by means of a press release or in any other manner which he may determine.

(b) The Secretary may terminate or suspend the operation of any or all of the provisions of this part whenever he finds that such provision or provisions obstruct or do not tend to effectuate the declared policy of the act.

(c) The Secretary shall terminate the provisions of this part at the end of any current marketing period whenever he finds that such termination is favored by a majority of the producers of peaches who, during such current marketing period, have been engaged in the production of peaches for market: *Provided*, That such majority have, during such period, produced for market more than 50 percent of the total volume of peaches produced for market during such period, but such termination shall be effective only if notice thereof is given on or before February 1 of such current marketing period.

(d) The provisions of this part shall, in any event, terminate whenever the provisions of the act authorizing them cease to be in effect.

§ 919.82 Proceedings after termination.

(a) Upon the termination of the provisions of this part, the members of the Administrative Committee then functioning shall, for the purpose of liquidating the affairs of the Committee, continue as joint trustees of all funds and property then in the possession or under the control of the committee, including claims for any funds unpaid or property not delivered at the time of such termination.

(b) The trustees shall continue in such capacity until discharged by the Secretary; shall, from time to time, account for all receipts and disbursements, or deliver all funds and property on hand, together with all books and records of the Administrative Committee and the joint trustees, to such person as the Secretary may direct; and shall, upon the request of the Secretary, execute such assignments or other instruments necessary or appropriate to vest in such person full title to all of the funds and claims vested in the committee or the joint trustees pursuant hereto.

(c) Any funds collected for expenses pursuant to the provisions of this part, and held by such joint trustees or such other person, over and above amounts necessary to meet outstanding obligations and the expenses incurred necessarily by the joint trustees or such other person in the performance of their duties under this part, shall, as soon as practicable after the termination hereof, be returned to the handlers pro rata in proportion to their contributions made pursuant to the provisions of this part.

(d) Any person to whom funds, property, or claims have been delivered by the Administrative Committee or its members upon direction of the Secretary, as provided in this section, shall be subject to the same obligations and duties with respect to said funds, property, or claims as are imposed upon the members of the committee or upon the joint trustees.

MISCELLANEOUS PROVISIONS

§ 919.90 Agents.

The Secretary may, by a designation in writing, name any person, including

any officer or employee of the Government, or name any bureau or division in the United States Department of Agriculture, to act as his agent or representative in connection with any of the provisions of this part.

§ 919.91 Duration of immunities.

The benefits, privileges, and immunities conferred upon any person by virtue of this part shall cease upon the termination hereof, except with respect to acts done under and during the existence of this part.

§ 919.92 Separability.

If any provision of this part is declared invalid or the applicability thereof to any person, circumstance, or thing is held invalid, the validity of the remainder of this part or the applicability thereof to any other person, circumstance, or thing shall not be affected thereby.

§ 919.93 Derogation.

Nothing contained in this part is or shall be construed to be in derogation or in modification of the rights of the Secretary or of the United States to exercise any powers granted by the Act or otherwise, or, in accordance with such powers, to act in the premises whenever such action is deemed advisable.

§ 919.94 Amendments.

Amendments to this part may be proposed, from time to time, by the Administrative Committee or by the Secretary.

§ 919.95 Effect of termination or amendment.

Unless otherwise expressly provided by the Secretary, the termination of this part or of any regulation issued pursuant thereto, or the issuance of any amendment to either thereof, shall not (a) affect or waive any right, duty, obligation, or liability which shall have arisen or which may thereafter arise in connection with any provision of this part or any regulation issued hereunder, or (b) release or extinguish any violation of this part or of any regulation issued hereunder, or (c) affect or impair any rights or remedies of the Secretary or of any other person with respect to any such violation.

Subpart—Rules and Regulations

SOURCE: 16 FR 307, Jan. 12, 1951, unless otherwise noted. Redesignated at 26 FR 12751, Dec. 30, 1961.

GENERAL

§ 919.100 Definitions.

(a) "Order" means Order No. 919, as amended (§§ 919.1 to 919.95), regulating the handling of peaches grown in the County of Mesa in Colorado.

(b) "Marketing agreement" means Marketing Agreement No. 88, as amended.

(c) All other terms used in this subpart shall have the same meaning as when used in the marketing agreement and order (§§ 919.1 to 919.95).

§ 919.101 Communications.

Unless otherwise prescribed in §§ 919.1 to 919.95 or required by the Administrative Committee, all reports, applications, submittals, requests, and communications in connection with the marketing agreement and order shall be addressed as follows:

Administrative Committee
P.O. Box 368
Palisade, Colorado

§ 919.102 Fiscal period.

The fiscal period which began December 1, 1978, is hereby extended and will end June 30, 19[illegible]. Thereafter the fiscal period will begin on July 1 and end on June 30 of the following year.

[44 FR 46427, Aug. 8, 1979]

§ 919.110 Modification of the procedure for nominating and selecting cooperative members pursuant to § 919.23(e).

If only one cooperative association qualifies as a handler during a fiscal year, the cooperative association shall be entitled to nominate three members and three alternate members of the committee for the ensuing fiscal year, and nominations shall be made in such manner as its members may designate.

[36 FR 11207, June 10, 1971]

§ 919.111 Redefinition of districts.

The districts into which the production area is divided are redefined as follows:

(a) "District No. 1" shall include all that portion of Mesa County lying north of the Colorado River and east of 37.3 Road and an extension thereof to the Mesa County line.

(b) "District No. 2" shall include all that portion of Mesa County lying south of the Colorado River, known as Vineland, on the floor of the valley and northeasterly which is to include the Rapid Creek Area.

(c) "District No. 3" shall include all that portion of Mesa County lying south of the Colorado River on the west of District No. 2, known as Orchard Mesa, to the natural barrier known as the Big Wash.

(d) "District No. 4" shall include all that portion of Mesa County lying south of the Colorado River bounded on the west by the Gunnison River and bounded on the east by natural barrier known as the Big Wash.

(e) "District No. 5" shall include all that portion of Mesa County west of 37.3 Road and an extension thereof to the Mesa County line, north of the Colorado River to the junction of the Colorado River and the Gunnison River, and all of the rest of Mesa County west and north of the junction of the Colorado and Gunnison Rivers.

[41 FR 43710, Oct. 4, 1976]

REGULATION OF SHIPMENTS

§ 919.153 Exemption certificates.

(a) Each application for an exemption certificate to ship a particular variety of peaches pursuant to § 919.53 shall be submitted on the then current Form A "Application for Exemption" to be obtained from the Administrative Committee. Each such application shall be submitted in accordance with the requirements of this section, shall be dated, shall contain a certification to the United States Department of Agriculture and to the Administrative Committee as to the truthfulness of the information shown therein, shall be signed by the applicant, and shall contain the following information:

(1) Name and address of applicant;

(2) Location of each orchard in which peaches of the particular variety are grown and such of these orchards from which peaches will be shipped under the requested exemption;

(3) With respect to each orchard from which the peaches are to be shipped, a description of the cultural practices followed, including, but not necessarily limited to, the extent of irrigation, fertilization, pruning, thinning, and spraying, and type of cultivation (for example: clean, cover crop, weedy);

(4) Description of the specific conditions (referred to in § 919.53) beyond the control of a prudent grower and his reasonable expectations which constitute the basis for the application;

(5) Estimated, or when available actual, production and disposition data, with respect to such particular variety grown in each orchard owned or controlled by the applicant, showing, on an individual orchard basis:

(i) Production in bushels;

(ii) Total quantity shipped, by grades and sizes, from beginning of season to date of application;

(iii) Total quantity otherwise disposed of from beginning of season to date of application, including sales to processors, dumped, fed to livestock, etc.;

(iv) Quantity remaining to be harvested and (*a*) estimated percentage thereof meeting the then current grade and size regulation, and (*b*) estimated percentage thereof failing to meet such grade and size regulation because of the specific conditions set forth in paragraph (a)(4) of this section;

(v) Estimated percentage which the total quantity shipped from all of the applicant's orchards from beginning of season to date of application (including all quantities shipped and to be shipped under exemption certificates) plus the estimated total quantity remaining to be shipped and meeting such grade and size regulation is of the aggregate production of such variety; and

(vi) Estimated percentage of the aggregate production of such variety which fails to meet such grade and size regulation because of the specific

conditions set forth in paragraph (a)(4) of this section; and

(6) Such other information as the applicant desires to furnish for consideration in connection with his application.

(b) The applicant shall at his own expense obtain and furnish with his application the following whenever applicable:

(1) When the application for exemption is for the shipment of peaches which do not meet grade requirements then in effect, a certification by a Federal-State inspector on the then current Form B regarding the injury or other defect serving as the basis for the application for exemption. Such certification shall contain a statement by the inspector that he (i) examined the orchard or orchards identified in the application and (ii) determined, from samples he has taken of the particular variety, that the percentage of this variety of peaches in such orchard or orchards which will meet such grade requirements is the percentage set forth in his certification.

(2) When the application for exemption is for the shipment of peaches which do not meet size requirements then in effect, a certification by an Orchard Examiner employed by the committee on the then current Form C. Such certification shall contain (i) a statement by the examiner that he examined the orchard or orchards identified in the application and verified the pertinent facts relating to the cultural practices followed by the applicant and as described in his application, and a summary of such facts shall be included in such statement; and (ii) a statement by the examiner that he has determined, from samples he has taken of the particular variety for which exemption is requested, the percentage of this variety of peaches in such orchard or orchards which will meet such size requirements and such statement shall include the percentage thus determined.

(c) The Administrative Committee may, whenever and for such time as it deems it necessary, employ as Orchard Examiners for the purpose set forth in paragraph (b)(2) of this section one or more persons familiar with peach culture in the area, and define their duties and fix their salaries as provided in § 919.32(h).

(d) The Administrative Committee may charge applicants for orchard examinations made by Orchard Examiners pursuant to a request for exemption, but such charge shall not exceed the rates charged by the Federal-State Inspection Service for orchard inspections under similar conditions.

(e) The Administrative Committee shall consider each application for exemption and investigate all relevant facts in connection therewith, including such facts as may not have been expressly disclosed in an applicable certification pursuant to paragraph (b) of this section.

(1) Whenever the committee determines that an applicant is entitled to the exemption applied for, it shall issue, or cause to be issued, an exemption certificate to the applicant. Each such certificate shall set forth the total quantity of peaches of the applicable variety, which do not meet the said size requirements or do not meet the said grade requirements because of specified defects, that may be shipped under the exemption certificate in the manner therein prescribed. Unless otherwise prescribed in such certificate, the peaches shall be shipped segregated from all other peaches. The exemption certificate may, however, prescribe that such peaches may be shipped in packages or lots containing specified tolerances for undersized peaches or specified tolerances for below grade peaches due to particular defects. Such certificate may also specify minimum grade, quality, size, or maturity requirements or any combination thereof, which shall be met by peaches shipped thereunder.

(2) If the committee determines that the applicant is not entitled to an exemption certificate, it shall so advise the applicant promptly in writing and state the reasons therefor. An applicant who is denied an exemption may appeal to the Secretary as provided in § 919.53(e). Such appeal shall include the information contained in the original application for the exemption and may include any additional information which the applicant feels should be considered by the Secretary in his review of the denial.

(f) The Administrative Committee shall establish such internal control of shipments pursuant to exemption certificates as it deems necessary to prevent producers to whom exemption certificates are issued from shipping or having shipped quantities of peaches of a particular variety greater than authorized, or in a manner other than as prescribed by this part.

(g) Each producer who ships peaches, or causes peaches to be shipped, pursuant to an exemption certificate, shall submit promptly to the Administrative Committee an accurate report with respect to the disposition of each such variety of peaches so shipped together with the date and quantity thereof.

[22 FR 4334, June 21, 1957. Redesignated at 26 FR 12751, Dec. 30, 1961]

REPORTS BY HANDLERS

§ 919.165 Reports.

With respect to all peaches shipped by each handler each day, the handler shall promptly report, or cause to be reported, to the Administrative Committee the point of origin of each shipment, the number and type of packages, the grades and sizes of the peaches, and the number of the railroad car or the license number of the truck, as the case may be, in which such peaches were shipped.

PEACHES NOT SUBJECT TO REGULATION

§ 919.171 Not subject to regulation.

(a) *Peaches for relief and similar purposes, and for processing.* Each person who ships peaches (1) for consumption by a charitable institution, (2) for distribution for relief purposes, (3) for distribution by a relief agency, or (4) for processing on a commercial scale shall promptly notify the Administrative Committee of the respective shipment and destination thereof.

(b) *Shipments not exceeding 19 bushels.* (1) Each person who, during any one day, ships to any one person an aggregate of not more than 19 bushels of peaches not for resale shall promptly submit to the Administrative Committee, on such form as is prescribed by the committee, the following information with respect to each such shipment:

(i) Date;

(ii) Aggregate quantity of peaches;

(iii) Name and address of person to whom shipped; and

(iv) Name and address of person shipping the peaches.

(2) One copy of the executed form should be furnished to the person to whom the peaches are shipped.

NOTE: After January 1, 1979, "Budget of Expenses and Rate of Assessment" regulations (e.g. sections .200 through .299) and "Handling" regulations (e.g. sections .324 through .399) which are in effect for a year or less, will not be carried in the Code of Federal Regulations. For FEDERAL REGISTER citations affecting these regulations, see the "List of CFR Sections Affected" in this volume.

Subpart—Grade and Size Regulation

§ 919.323 Peach Regulation 22.

(a) On and after November 30, 1981 no handler shall ship:

(1) Any peaches of any veriety which do not grade at least U.S. No. 1;

(2) Any peaches of any variety which are of a size smaller than 2⅛ inches in diameter: *Provided,* That any lot of peaches shall be deemed to be of a size not smaller than 2⅛ inches in diameter if (i) not move than 10 percent, by count, of such peaches in such lot are smaller than 2⅛ inches in diameter, and (ii) not more than 15 percent, by count, of the peaches contained in any individual container in such lot are smaller than 2⅛ inches in diameter.

(b) The terms "U.S. No. 1", "diameter", and "count" mean the same as defined in the United States Standards for Peaches (7 U.S.C. 2851.1210-2851.1223).

[46 FR 53394, Oct. 29, 1981]

PART 920—KIWIFRUIT GROWN IN CALIFORNIA

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920.302 Grade, size, pack, and container regulations.

AUTHORITY: Secs. 1-19, 48 Stat. 31, as amended; 7 U.S.C. 601-674.

SOURCE: 49 FR 39658, Oct. 10, 1984, unless otherwise noted.

DEFINITIONS

§ 920.1 Secretary.

"Secretary" means the Secretary of Agriculture of the United States, or any officer or employee of the Department of whom authority has heretofore been delegated, or to whom authority may hereafter be delegated.

§ 920.2 Act.

"Act" means Public Act No. 10, 73d Congress (May 12, 1933), as amended and as reenacted and amended by the Agricultural Marketing Agreement Act of 1937, as amended (48 Stat. 31, as amended; 7 U.S.C. 601 *et seq.*).

§ 920.3 Person.

"Person" means an individual, partnership, corporation, association or any other business unit.

§ 920.4 Production area.

"Production area" means the State of California.

§ 920.5 Kiwifruit.

"Kiwifruit" means all varieties of *Actinidia chinensis*, Planch., commonly called kiwifruit, or kiwi, grown in the production area.

§ 920.6 Varieties.

"Varieties" means and includes all classifications or subdivisions of kiwifruit.

§ 920.7 Fiscal period.

"Fiscal period" is synonymous with fiscal year and means a 12-month period beginning on August 1 of one year and ending on the last day of July of the following year or such other period as the committee, with the approval of the Secretary, may prescribe.

§ 920.8 Committee.

"Committee" means the Kiwifruit Administrative Committee established pursuant to § 920.20

§ 920.9 Grower.

"Grower" is synonymous with producer and means any person who produces kiwifruit for the fresh market

and who has a proprietary interest therein.

§ 920.10 Handler.

"Handler" is synonymous with shipper and means any person (except a common or contract carrier transporting kiwifruit owned by another person) who handles kiwifruit.

§ 920.11 Handle.

"Handle" and ship are synonymous and mean to sell, consign, deliver, or transport kiwifruit, or to cause kiwifruit to be sold, consigned, delivered, or transported, between the production area and any point outside thereof, or within the production area: *Provided,* That the term handle shall not include the sale of kiwifruit on the vine, the transportation within the production area of kiwifruit from the vineyard where grown to a packing facility located within such area for preparation for market, or the delivery of such kiwifruit to such packing facility for such preparation.

§ 920.12 District.

"District" means the applicable one of the following described subdivisions of the production area or such other subdivision as may be prescribed pursuant to § 920.31:

(a) "District 1" shall include the counties of Siskiyou, Modoc, Shasta, Lassen, Tehama, Plumas, and Butte (with the exception of that area set aside as "District 2").

(b) "District 2" shall include the 95948 postal zip code area known as Gridley (and the surrounding area), incorporating the area located within the following boundaries: The area west of the Feather River; north of the Butte/Sutter county line; east of Pennington and Riley Roads; and south of Farris Road, Ord Ranch Road and Gridley Avenue.

(c) "District 3" shall include the counties of Yuba, Sutter, Sierra, Nevada, and Placer.

(d) "District 4" shall include the counties Del Norte, Humboldt, Trinity, Mendocino, Lake, Sonoma, Marin, Napa, Solano, Yolo, Colusa, and Glenn.

(e) "District 5" shall include the counties of San Joaquin, Calaveras, Tuolumne, Merced, Stanislaus, Contra Costa, El Dorado, Amador, Sacramento, Alpine, San Francisco, Alameda, San Mateo, Santa Clara, Santa Cruz, San Benito and Monterey.

(f) "District 6" shall include the counties of Mono, Mariposa, Madera, Fresno and Kings.

(g) "District 7" shall include the counties of Tulare and Inyo.

(h) "District 8" shall include the counties of San Luis Obispo, Santa Barbara, San Bernardino, Kern, Ventura, Los Angeles, Orange, Riverside, San Diego and Imperial.

§ 920.13 Pack.

"Pack" means the specific arrangement, size, weight, count, or grade of a quantity of kiwifruit in a particular type and size of container, or any combination thereof.

§ 920.14 Container.

"Container" means a box, bag, crate, lug, basket, carton, package, or any other type of receptacle used in the packaging or handling of kiwifruit.

Administrative Body

§ 920.20 Establishment and membership.

There is hereby established a Kiwifruit Administrative Committee consisting of 12 members, each of whom shall have an alternate who shall have the same qualifications as the member for whom he or she is an alternate. The 12 member committee shall be made up of the following: One public member (and alternate); one member (and alternate) from each of the eight California districts; three additional committee members and their alternates to be selected from the three districts with three highest productions based on the production in the prior fiscal period: *Provided,* That no more than a total of two members and their alternates shall represent any one district. With the exception of the public member and alternate, all members and their respective alternates shall be *growers or employees of growers.*

§ 920.21 Term of office.

The term of office of each member and alternate member of the commit-

tee shall be two years from the date of their selection and until their successor has qualified; provided, however, that of the first members of the committee, one-half shall serve for one year, and one-half shall serve for two years, with the determination of term of each member to be made by lot at the time of selection. Except as otherwise provided in this Order, the terms shall begin August 1 and end on the last day of July. Members and alternates may serve up to three consecutive two year terms on the committee.

§ 920.22 Nomination.

(a) *Initial members.* Nominations for each of the initial members, with the exception of the public member and alternate, together with nominations for the initial alternate members for each position, may be submitted to the Secretary by the committee responsible for promulgation of this part. Such nominations may be made by means of group meetings of the growers concerned in each district. Such nominations, if made, shall be filed with the Secretary no later than the effective date of this part. In the event nominations for initial members and alternate members of the committee are not filed pursuant to, and within the time specified in this section, the Secretary may select such initial members and alternate members without regard to nominations, but selections shall be on the basis of the representation provided in § 920.20.

(b) *Successor members.* (1) The committee shall hold or cause to be held, not later than July 15 of each year, a meeting or meetings of growers in each district for the purpose of designating nominees for successor members and alternate members of the committe. These meetings shall be supervised by the committee which shall prescribe such procedure as shall be reasonable and fair to all persons concerned.

(2) Only growers from a given district who are present at such nomination meetings, or represented at such meetings by duly authorized employees, may participate in the nomination and election of nominees for members and their alternates.

(3) A particular grower shall be eligible for membership as member or alternate member to fill only one position on the committee.

(c) The public member and alternate member shall be selected by the Secretary in his discretion.

§ 920.23 Selection.

From the nominations made pursuant to § 920.22, or from other qualified persons, the Secretary shall select the 12 members of the committee and an alternate for each such member, with the exception of the public member and alternate member, who shall be selected by the Secretary in his discretion.

§ 920.24 Failure to nominate.

If nominations are not made within the time and in the manner prescribed in § 920.22, the Secretary may, without regard to nominations, select the members and alternate members of the committee on the basis of the representation provided for in § 920.20.

§ 920.25 Acceptance.

Each person to be selected by the Secretary as a member or as an alternate member of the committee shall, prior to such selection, qualify by advising the Secretary that he/she agrees to serve in the position for which nominated for selection.

§ 920.26 Vacancies.

To fill any vacancy occasioned by the failure of any person selected as a member or as an alternate member of the committee to qualify, or in the event of the death, removal, resignation, or disqualification of any member or alternate member of the committee, a successor for the unexpired term of such member or alternate member of the committee shall be nominated and selected, or, in the case of the public member and alternate, selected by the Secretary in his discretion, in the manner specified in §§ 920.22 and 920.23. If the names of nominees to fill any such vacancy are not made available to the Secretary within a reasonable time after such vacancy occurs, the Secretary may fill such vacancy without regard to nomi-

nations, which selection shall be made on the basis of representation provided for in § 920.20.

§ 920.27 Alternate members.

An alternate member of the committee, during the absence of either the member for whom that individual is an alternate, or, in the case of districts with two grower positions on the committee, the other member and that member's alternate, shall act in the place and stead of such member and perform such other duties as assigned. In the event of the death, removal, resignation, or disqualification of a member, the alternate of such member shall act for him or her until a successor for such member is selected and has qualified.

§ 920.30 Powers.

The committee shall have the following powers:

(a) To administer the provisions of this part in accordance with its terms;

(b) To receive, investigate, and report to the Secretary complaints of violations of the provisions of this part;

(c) To make and adopt rules and regulations to effectuate the terms and provisions of this part; and

(d) To recommend to the Secretary amendments to this part.

§ 920.31 Duties.

The committee shall have, among others, the following duties:

(a) To select a chairperson and such other officers as may be necessary, and to define the duties of such officers;

(b) To appoint such employees, agents and representatives as it may deem necessary, and to determine compensation and to define the duties of each;

(c) To submit to the Secretary as soon as practicable after the beginning of each fiscal period a budget for such fiscal period, including a report in explanation of the items appearing therein and a recommendation as to the rate of assessment for such period;

(d) To keep minutes, books and records which will reflect all of the acts and transactions of the committee and which shall be subject to examination by the Secretary;

(e) To prepare periodic statements of the financial operations of the committee and to make copies of each such statement available to growers and handlers for examination at the office of the committee;

(f) To cause its books to be audited by a public accountant at least once each fiscal year and at such times as the Secretary may request;

(g) To act as intermediary between the Secretary and any grower or handler;

(h) To investigate and assemble data on the growing, handling and marketing conditions with respect to kiwifruit;

(i) To submit to the Secretary the same notice of meetings of the committee as is given to its members;

(j) To submit to the Secretary such available information as may be requested;

(k) To investigate compliance with the provisions of this part;

(l) With the approval of the Secretary, to redefine the districts into which the production area is divided and to reapportion the representation of any district on the committee: *Provided,* That any such changes shall reflect, insofar as practicable, shifts in kiwifruit production within the districts and the production area.

§ 920.32 Procedure.

(a) Eight members of the committee, or alternates acting for members, shall constitute a quorum and any action of the committee shall require the concurring vote of the majority of those present: *Provided,* That actions of the committee with respect to expenses and assessments, or recommendations for reguations pursuant to §§ 920.50 through 920.55, of this part shall require at least eight concurring votes.

(b) The committee may vote by telephone, telegraph, or other means of communication, and any votes so cast shall be confirmed promptly in writing: *Provided,* That if an assembled meeting is held, all votes shall be cast in person.

§ 920.33 Expenses and compensation.

(a) Except for the public member and alternate, the members of the committee, and alternates when acting as members, shall serve without compensation but shall be reimbursed for expenses necessarily incurred by them in the performance of their duties under this part: *Provided,* That the committee at its discretion may request the attendance of one or more alternates, including the public alternate, at any or all meetings notwithstanding the expected or actual presence of the respective members and may pay expenses as aforesaid.

(b) The public member and alternate shall be reimbursed for expenses necessarily incurred by them in the performance of their duties under this part, and shall receive per diem compensation established by the committee.

§ 920.34 Annual report.

The committee shall, as soon as is practicable after the close of each marketing season, prepare and mail an annual report to the Secretary and make a copy available to each grower and handler who requests a copy of the report.

Expenses and Assessments

§ 920.40 Expenses.

The committee is authorized to incur such expenses as the Secretary finds are reasonable and likely to be incurred by the committee for its maintenance and functioning and to enable it to exercise its powers and perform its duties in accordance with the provisions of this part. The funds to cover such expenses shall be acquired in the manner prescribed in § 920.41.

§ 920.41 Assessments.

(a) As his or her pro rata share of the expenses which the Secretary finds are reasonable and likely to be incurred by the committee during a fiscal period, each person who first handles kiwifruit during such period shall pay to the committee, upon demand, assessments on all kiwifruit so handled. The payment of assessments for the maintenance and functioning of the committee may be required under this part throughout the period it is in effect, irrespective of whether particular provisions thereof are suspended or become inoperative. If a handler does not pay any assessment within the time prescribed by the committee, the assessment may be subject to an interest charge at a rate prescribed by the committee with the approval of the Secretary.

(b) The Secretary shall fix the rate of assessment to be paid by each such person during a fiscal period in an amount designed to secure sufficient funds to cover the expenses which may be incurred during such period and to accumulate and maintain a reserve fund equal to approximately one fiscal period's expenses. At any time during or after the fiscal period, the Secretary may increase the rate of assessment in order to secure sufficient funds to cover any later finding by the Secretary relative to the expenses which may be incurred: *Provided,* That any assessment, excluding any amount collected pursuant to § 920.55(c), must be limited to a maximum assessment rate of three and one-half cents per flat, or the equivalent thereof. The Secretary may increase this maximum rate in each succeeding year after the initial year of order operation by the Consumer Price Index (cost of living) for California as published by the Bureau of Labor Statistics. Such increase shall be applied to all kiwifruit handled during the applicable fiscal period. In order to provide funds for the administration of the provisions of this part during the first part of a fiscal period before sufficient operating income is available from assessments on the current year's shipments, the committee may accept the payment of assessments in advance, and may also borrow money for such purposes.

§ 920.42 Accounting.

(a) If, at the end of a fiscal period, the assessments collected are in excess of expenses incurred, such excess shall be accounted for in accordance with one of the following:

(1) If such excess is not retained in a reserve, as provided in paragraph

(a)(2) of this section, it shall be refunded proportionately to the persons from whom it was collected: *Provided,* That any sum paid by a person in excess of his or her pro rata share of the expenses during any fiscal period may be applied by the committee at the end of such fiscal period to any outstanding obligations due the committee from such person.

(2) The committee, with the approval of the Secretary, may carry over such excess into subsequent fiscal periods as a reserve: *Provided,* That funds already in the reserve do not equal approximately one fiscal period's expenses. Such reserve funds may be used: (i) To defray expenses, during any fiscal period, prior to the time assessment income is insufficient to cover such expenses; (ii) to cover deficits incurred during any fiscal year when assessment income is less than expenses; (iii) to defray expenses incurred during any period when any or all provisions of this part are suspended or are inoperative; and, (iv) to cover necessary expenses of liquidation in the event of termination of this part. Upon such termination, any funds not required to defray the necessary expenses of liquidation shall be disposed of in such manner as the Secretary may determine to be appropriate: *Provided,* That to the extent practical, such funds shall be returned pro rata to the persons from whom such funds were collected.

(b) All funds received by the committee pursuant to the provisions of this part shall be used solely for the purpose specified in this part and shall be accounted for in the manner provided in this part. The Secretary may at any time require the committee and its members to account for all receipts and disbursements.

(c) Upon the removal or expiration of the term of office of any member of the committee, such member shall account for all receipts and disbursements and deliver all property and funds in his or her possession to the committee, and shall execute such assignments and other instruments as may be necessary or appropriate to vest in the committee full title to all of the property, funds, and claims vested in such member pursuant to this part.

Regulations

§ 920.50 Marketing policy.

(a) Each season prior to making any recommendations pursuant to § 920.51, the committee shall submit to the Secretary a report setting forth its marketing policy for the ensuing marketing season. Such marketing policy report shall contain information relative to:

(1) The estimated total production of kiwifruit within the production area;

(2) The expected general quality and size of kiwifruit in the production area and in other areas;

(3) The expected demand conditions for kiwifruit in different market outlets;

(4) The expected shipments of kiwifruit produced in the production area and in areas outside the production area;

(5) Supplies of competing commodities;

(6) Trend and level of consumer income;

(7) Other factors having a bearing on the marketing of kiwifruit; and

(8) The type of regulations expected to be recommended during the marketing season.

§ 920.51 Recommendations for regulation.

(a) Whenever the committee deems it advisable to regulate the handling of any variety or varieties of kiwifruit in the manner provided in § 920.52, it shall so recommend to the Secretary.

(b) In arriving at its recommendations for regulation pursuant to paragraph (a) of this section, the committee shall give consideration to current information with respect to the factors affecting the supply and demand for kiwifruit during the period or periods when it is proposed that such regulations should be made effective. With each such recommendation for regulation, the committee shall submit to the Secretary the data and information on which such recommendation is predicated and such other available information as the Secretary may request.

§ 920.52 Issuance of regulations.

(a) The Secretary shall regulate, in the manner specified in this section, the handling of kiwifruit whenever the Secretary finds, from the recommendations and information submitted by the committee, or from other available information, that such regulations will tend to effectuate the declared policy of the act. Such regulations may:

(1) Limit, during any period or periods, the shipment of any particular grade, size, quality, maturity, or pack, or any combination thereof, of any variety or varieties of kiwifruit grown in the production area;

(2) Limit the shipment of kiwifruit by establishing, in terms of grades, sizes, or both, minimum standards of quality and maturity during any period when season average prices are expected to exceed the parity level;

(3) Fix the size, capacity, weight, dimensions, markings, or pack of the container, or containers, which may be used in the packaging or handling of kiwifruit.

(b) The committee shall be informed immediately of any such regulation issued by the Secretary and the committee shall promptly give notice thereof to handlers.

§ 920.53 Modification, suspension, or termination of regulations.

(a) In the event the committee at any time finds that, by reason of changed conditions, any regulations issued pursuant to § 920.52 should be modified, suspended, or terminated, it shall so recommend to the Secretary.

(b) Whenever the Secretary finds from the recommendations and information submitted by the committee or from other available information, that a regulation should be modified, suspended, or terminated with respect to any or all shipments of kiwifruit in order to effectuate the declared policy of the act, the Secretary shall modify, suspend, or terminate such regulation. If the Secretary finds that a regulation obstructs or does not tend to effectuate the declared policy of the act, the Secretary shall suspend or terminate such regulation. On the same basis and in like manner the Secretary may terminate any such modification or suspension.

§ 920.54 Special purpose shipments.

(a) Except as otherwise provided in this section, any person may, without regard to the provisions of §§ 920.41, 920.52, 920.53 and 920.55 and the regulations issued thereunder, handle kiwifruit: (1) For consumption by charitable institutions; (2) for distribution by relief agencies; or (3) for commercial processing into products.

(b) Upon the basis of recommendations and information submitted by the committee, or from other available information, the Secretary may relieve from any or all requirements, under or established pursuant to § 920.41, § 920.52, § 920.53 or § 920.55, the handling of kiwifruit: (1) To designated market areas; (2) for such specified purposes (including shipments to facilitate the conduct of marketing research and development projects); or, (3) in such minimum quantities or types of shipments, as may be prescribed.

(c) The committee shall, with the approval of the Secretary, prescribe such rules, regulations, and safeguards as it may deem necessary to prevent kiwifruit handled under the provisions of this section from entering the channels of trade for other than the specific purposes authorized by this section. Such rules, regulations, and safeguards may include the requirements that handlers shall file applications and receive approval from the committee for authorization to handle kiwifruit pursuant to this section, and that such applications be accompanied by a certification by the intended purchaser or receiver that the kiwifruit will not be used for any purpose not authorized by this section.

§ 920.55 Inspection and certification.

(a) Whenever the handling of any variety of kiwifruit is regulated pursuant to § 920.52, or § 920.53, each handler who handles kiwifruit shall, prior thereto, cause such kiwifruit to be inspected by the Federal or Federal-State Inspection Service and certified as meeting the applicable requirements of such regulation: *Provided,*

That inspection and certification shall not be required for kiwifruit which previously have been so inspected and certified if such prior inspection was performed within such period as may be established pursuant to paragraph (b) of this section. Promptly after inspection and certification, each such handler shall submit, or cause to be submitted, to the committee a copy of the certificate of inspection issued with respect to such kiwifruit. The committee may, with the approval of the Secretary, prescribe rules and regulations waiving the inspection requirements of this section where it is determined that inspection is not available: *Provided,* That all shipments made under such waiver shall comply with all regulations in effect.

(b) The committee may, with the approval of the Secretary, establish a period prior to shipment during which the inspection required by this section must be performed.

(c) The committee may enter into an agreement with the Federal and Federal-State Inspection Services with respect to the costs of the inspection required by paragraph (a) of this section, and may collect from handlers their respective pro rata shares of such costs.

Reports

§ 920.60 Reports.

(a) Each handler shall furnish to the committee, at such times and for such periods as the committee may designate, certified reports covering, to the extent necessary for the committee to perform its functions, each shipment of kiwifruit as follows:

(1) The name of the shipper and the shipping point;

(2) The car or truck license number (or name of the trucker), and identification of the carrier;

(3) The date and time of departure;

(4) The number and type of containers in the shipment;

(5) The quantities shipped, showing separately the variety, size and grade of the fruit;

(6) The destination;

(7) Identification of the inspection certificate or waiver pursuant to which the fruit was handled.

(b) Upon request of the committee, made with the approval of the Secretary, each handler shall furnish to the committee, in such manner and at such times as it may prescribe, such other information as may be necessary to enable the committee to perform its duties under this part.

(c) Each handler shall maintain for at least two succeeding fiscal years, such records of the kiwifruit received and disposed of by such handler as may be necessary to verify the reports submitted to the committee pursuant to this section.

(d) All reports and records submitted by handlers pursuant to the provisions of this section shall be received by, and at all times be in custody of, one or more designated employees of the committee. No such employee shall disclose to any person, other than the Secretary upon request therefor, data or information obtained or extracted from such reports and records which might affect the trade position, financial condition, or business operation of the particular handler from whom received: *Provided,* That such data and information may be combined, and made available to any person, in the form of general reports in which the identities of the individual handler furnishing the information, is not disclosed but may be revealed to any extent necessary to effect compliance with the provisions of this part and the regulations issued thereunder.

Miscellaneous Provisions

§ 920.61 Compliance.

(a) Except as provided in this part, no person shall handle kiwifruit, the shipment of which has been prohibited by the Secretary in accordance with the provisions of this part; and no person shall handle kiwifruit except in conformity with the provisions of this part and the regulations issued under this part.

(b) For the purpose of checking and verifying reports filed by handlers, the committee, through its duly authorized representatives shall have access to any handler's premises during regular business hours, and shall be permitted at any such times to inspect such premises and any kiwifruit held

by such handler, and any and all records of the handler with respect to his or her acquisition, sales, uses and shipments of kiwifruit. Each handler shall furnish all labor and equipment necessary to make such inspections.

§ 920.62 Right of the Secretary.

The members of the committee (including successors and alternates), and any agents, employees, or representatives thereof, shall be subject to removal or suspension by the Secretary at any time. Each and every regulation, decision, determination, or other act of the committee shall be subject to the continuing right of the Secretary to disapprove of the same at any time. Upon such disapproval, the disapproved action of the committee shall be deemed null and void, except as to acts done in reliance thereon or in accordance therewith prior to such disapproval by the Secretary.

§ 920.63 Termination.

(a) The Secretary may at any time terminate the provisions of this part by giving at least one day's notice by means of a press release or in any other manner in which the Secretary may determine.

(b) The Secretary shall terminate or suspend the operation of any and all of the provisions of this part whenever the Secretary finds that such provisions do not tend to effectuate the declared policy of the act.

(c) The Secretary shall terminate the provisions of this part whenever the Secretary finds by referendum or otherwise that such termination is favored by a majority of the growers: *Provided,* That such majority has, during the current marketing season, produced more than 50 percent of the volume of the kiwifruit which were produced within the production area for shipment in fresh form. Such termination shall become effective on the first day of August subsequent to the announcement thereof by the Secretary.

(d) The committee shall consider all petitions from growers submitted to it for termination of this part provided such petitions are received by the committee prior to February 1 of the then current fiscal period. Upon recommendation of the committee received not later than April 1 of the then current fiscal period, the Secretary shall conduct a referendum among the growers prior to July 15 of such fiscal period to ascertain whether continuance of this part is favored by producers.

(e) The Secretary shall conduct a referendum within the period beginning May 15, 1990, and ending July 15, 1990, to ascertain whether continuance of this part is favored by the growers as set forth in paragraph (c) of this section. The Secretary shall conduct such a referendum within the same period of every sixth fiscal period thereafter.

(f) The provisions of this part shall, in any event, terminate whenever the provisions of the act authorizing them cease to be in effect.

§ 920.64 Proceeding after termination.

(a) Upon the termination of the provisions of this part, the committee shall, for the purpose of liquidating the affairs of the committee, continue as trustee of all the funds and property then in its possession, or under its control, including claims for any funds unpaid or property not delivered at the time of such termination.

(b) The said trustees shall: (1) Continue in such capacity until discharged by the Secretary; (2) from time to time account for all receipts and disbursements and deliver all property on hand, together with all books and records of the committee and of the trustees, to such persons as the Secretary may direct; and (3) upon the request of the Secretary, execute such assignments or other instruments necessary or appropriate to vest in such person, full title and right to all of the funds, property, and claims vested in the committee of the trustees pursuant thereto.

(c) Any person to whom funds, property, or claims have been transferred or delivered, pursuant to this section, shall be subject to the same obligation imposed upon the committee and upon the trustees.

§ 920.65 Effect of termination or amendment.

Unless otherwise expressly provided by the Secretary, the termination of this part or of any regulation issued pursuant to this part, or the issuance of any amendment to either thereof, shall not (a) affect or waive any right, duty, obligation, or liability which shall have arisen or which may thereafter arise in connection with any provision of this part or any regulation issued under this part, or (b) release or extinguish any violation of this part or of any regulation issued under this part, or (c) affect or impair any rights or remedies of the Secretary or of any other person with respect to any such violation.

§ 920.66 Duration of immunities.

The benefits, priviliges, and immunities conferred upon any person by virtue of this part shall cease upon its termination, except with respect to acts done under and during the existence of this part.

§ 920.67 Agents.

The Secretary may, by designation in writing, name any officer or employee of the United States, or name any agency or division in the United States Department of Agriculture, to act as the Secretary's agent or representative in connection with any of the provisions of this part.

§ 920.68 Derogation.

Nothing contained in this part is, or shall be construed to be, in derogation or in modification of the rights of the Secretary or of the United States (a) to exercise any powers granted by the act or otherwise, or (b) in accordance with such powers, to act in the premises whenever such action is deemed advisable.

§ 920.69 Personal liability.

No member or alternate member of the committee and no employee or agent of the committee shall be held personally responsible, either individually or jointly with others, in any way whatsoever, to any person for errors in judgment, mistakes, or other acts, either of commission or omission, as such member, alternate, employee or agent, except for acts of dishonesty, willful misconduct, or gross negligence.

§ 920.70 Separability.

If any provision of this part is declared invalid or the applicability thereof to any person, circumstance, or thing is held invalid, the validity of the remainder of this part or the applicability thereof to any other person, circumstance, or thing shall not be affected thereby.

§ 920.110 Exemptions.

(a) *Waivers.* A handler may handle kiwifruit without inspection and certification, as prescribed under § 920.55, if all shipments made under such waivers comply with all regulations in effect, and all the following conditions are met:

(1) The handler requests the Federal-State Inspection Service to provide inspection during its regular working hours at least 4 hours in advance of the time when inspection is needed. The request need not be in writing but it shall be confirmed immediately in writing by the inspection service.

(2) The Federal-State Inspection Service advises the handler that it is not practicable to provide inspection at the time and place designated by the handler. This advice may be verbal but it shall be confirmed in writing by the Federal-State Inspection Service. A confirmed copy thereof shall be forwarded by the inspection service to the office of the Kiwifruit Administrative Committee.

(3) The Federal-State Inspection Service furnishes the handler with the waiver number which shall cover the kiwifruit on which inspection is requested.

(4) When instructed to do so, the handler plainly and conspicuously marks the end of each container with the letter "W" and the waiver number assigned by the Federal-State Inspection Service. The letter "W" and the number shall not be less than one-half inch in height.

(b) *Minimum quantities.* Notwithstanding any other provision of this section, kiwifruit may be handled

without regard to the provision of §§ 920.41, 920.52, 920.55 and 920.60 under the following conditions:

(1) Such kiwifruit are for home use and not for resale.

(2) The net weight of such kiwifruit sold to any one person during any one day does not exceed 200 pounds.

(3) Such kiwifruit are handled by the person who produced them and, the handling takes place: (i) On the premises where grown, (ii) at a packing house, or retail stand (roadside stand, flea market or any other outlet approved by the committee) which is operated by said handler, or (iii) at a Certified Farmers Market.

[50 FR 4856, Feb. 4, 1985]

§ 920.155 Inspection requirement.

Any kiwifruit which is inspected and certified as meeting grade, size, quality or maturity requirements in effect pursuant to § 920.52 or § 920.53 prior to January 1 of each fiscal year, as defined in § 920.7, and not shipped by January 14 of such fiscal year shall be reinspected prior to shipment. Any kiwifruit which is inspected and certified on or after January 1 of each fiscal year and not shipped within 14 days following the date of inspection shall be reinspected prior to shipment. Any kiwifruit which is reinspected must be certified as meeting grade, size, quality or maturity requirements in effect pursuant to § 920.52 or § 920.53.

[50 FR 41660, Oct. 15, 1985]

§ 920.160 Reports.

(a) When requested by the Kiwifruit Administrative Committee, each shipper who ships kiwifruit shall furnish a report of shipment and inventory data to the committee no later than the fifth day of the following month of such shipment, or such other later time established by the committee. That report shall show: (1) The reporting month; (2) the name and other identification of the shipper; (3) the number of containers by type and weight by shipment destination category; (4) inventory at the end of the reporting month by container, and with respect to flats, the size of the kiwifruit; (5) the amount of kiwifruit lost in repack; and (6) the amount of fruit set aside for processing.

(b) *Beginning inventory data.* Each handler shall file with the committee no later than five days after all fruit is packed, or such other later time as the committee may establish, the handler's beginning inventory by container and with respect to flats, the sizes of the kiwifruit packed in such flats.

[50 FR 4856, Feb. 4, 1985]

§ 920.302 Grade, size, pack, and container regulations.

(a) On and after September 9, 1985, no handler shall ship any kiwifruit unless such kiwifruit meet the following requirements:

(1) *Grade Requirements.* Fresh shipments of kiwifruit shall grade a least 85 percent U.S. No. 2: *Provided,* That no more than 8 percent be allowed for defects other than badly misshapen fruit.

(2) *Size Requirements.* Such kiwifruit are a minimum size 49 (size 49 means that an eight-pound sample representative of this size in the package or container, contains not more than 64 pieces of fruit: *Provided,* That size 30, 33, 36, and 39 mean that an eight-pound sampler representative of these sizes in a package or container, contains not more than 34, 37, 41, and 46 pieces of fruit, respectively.

(3) *Pack Requirements.* Such kiwifruit shall be fairly uniform in size and shall be packed in boxes, flats, lugs, cartons or any other containers and arranged according to approved and recognized methods. Containers shall be well filled; contents tightly packed but not be excessively or unnecessarily bruised by overfilling or oversizing. Fruit in the shown face of the container shall be reasonably representative in size and quality of the contents. When packed in closed containers the size shall be indicated by marking the container with the numerical count. Fruit packed in containers with cell compartments, cardboard fillers or molded trays shall be of proper size for the cells, fillers, or molds in which they are packed, and conform to the marked count. For the purposes of this section, "fairly uniform in size" means that size 30 or

larger cannot vary more than ½ inch in diameter, sizes 33 and 36 cannot vary more than ⅜ inch in diameter, and size 39 or smaller cannot vary more than ¼ inch in diameter: *Provided*, That volume fill containers are exempt from numerical count markings on containers: *Provided further*, That "diameter" means the greatest dimension measured at right angles to a line from stem to blossom end: and *Provided further*, That not more than 10 percent, by count, of containers in any lot and not more than 5 percent, by count, of kiwifruit in any container may fail to meet these requirements.

(4) *Container Requirements.* Containers of kiwifruit shall be plainly marked with the lot stamp number corresponding to the lot inspection conducted by an authorized inspector, except those that are being directly loaded into a vehicle for export shipment under the supervision of the Federal or Federal-State Inspection Service.

(b) The term "U.S. No. 2" means the same as defined in the United States Standards for Grades of Kiwifruit (7 CFR 51.2335 through 51.2340).

[50 FR 36568, Sept. 9, 1985]

PART 921—FRESH PEACHES GROWN IN DESIGNATED COUNTIES IN WASHINGTON

Subpart—Order Regulating Handling

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921.318 Peach Regulation 18.

AUTHORITY: Secs. 1-19, 48 Stat. 31, as amended; 7 U.S.C. 601-674.

SOURCE: 25 FR 4669, May 27, 1960, unless otherwise noted. Redesignated at 26 FR 12751, Dec. 30, 1961.

Subpart—Order Regulating Handling

Definitions

§ 921.1 Secretary.

"Secretary" means the Secretary of Agriculture of the United States, or any officer or employee of the Department to whom authority has heretofore been delegated, or to whom authority may hereafter be delegated, to act in his stead.

§ 921.2 Act.

"Act" means Public Act No. 10, 73d Congress (May 12, 1933), as amended and as re-enacted and amended by the Agricultural Marketing Agreement Act of 1937, as amended (secs. 1-19, 48 Stat. 31, as amended; 7 U.S.C. 601-674).

§ 921.3 Person.

"Person" means an individual, partnership, corporation, association, or any other business unit.

§ 921.4 Production area.

"Production area" means the Counties of Okanogan, Chelan, Kittitas, Yakima, and Klickitat in the State of Washington and all of the counties in Washington lying east thereof.

§ 921.5 Peaches.

"Peaches" means all varieties of peaches, grown in the production area, classified, botanically as Prunus persica.

§ 921.6 Varieties.

"Varieties" means and includes all classifications or subdivisions of Prunus persica.

§ 921.7 Fiscal period.

"Fiscal period" is synonymous with fiscal year and means the 12-month period ending on March 31 of each year or such other period that may be approved by the Secretary pursuant to recommendations by the committee.

§ 921.8 Committee.

"Committee" means the Washington Fresh Peach Marketing Committee established pursuant to § 921.20.

§ 921.9 Grade.

"Grade" means any one of the officially established grades of peaches as defined and set forth in:

(a) United States Standards for Peaches (§§ 51.1210-51.1223 of this title) or amendments thereto, or modifications thereof, or variations based thereon;

(b) Standards for peaches issued by the State of Washington or amendments thereto, or modifications thereof, or variations based thereon.

§ 921.10 Size.

"Size" means the greatest diameter, measured through the center of the peach, at right angles to a line running from the stem to the blossom end, or such other specification as may be established by the committee with the approval of the Secretary.

§ 921.11 Grower.

"Grower" is synonymous with producer and means any person who produces peaches for market and who has a proprietary interest therein.

§ 921.12 Handler.

"Handler" is synonymous with shipper and means any person (except a common or contract carrier transporting peaches owned by another person) who handles peaches.

§ 921.13 Handle.

"Handle" or "ship" means to sell, consign, deliver, or transport peaches within the production area or between the production area and any point outside thereof: *Provided*, That the term "handle" shall not include the transportation within the production area of peaches from the orchard where grown to a packing facility located within such area for preparation for market.

§ 921.14 District.

"District" means the applicable one of the following described subdivisions of the production area, or such other subdivisions as may be prescribed pursuant to § 921.31(m):

(a) "District 1" shall include the Counties of Chelan, Okanogan, Douglas, Grant, Lincoln, Spokane, Ferry,

Stevens, and Pend Oreille in the State of Washington.

(b) "District 2" shall include the Counties of Kittitas, Yakima, Klickitat, Benton, Adams, Franklin, Walla Walla, Whitman, Columbia, Garfield, and Asotin in the State of Washington.

§ 921.15 Export.

"Export" means to ship peaches to any destination which is not within the 48 contiguous States, or the District of Columbia, of the United States.

§ 921.16 Pack.

"Pack" means the specific arrangement, size, weight, count, or grade of a quantity of peaches in a particular type and size of container, or any combination thereof.

§ 921.17 Container.

"Container" means a box, bag, crate, lug, basket, carton, package, or any other type of receptacle used in the packaging or handling of peaches.

Administrative Body

§ 921.20 Establishment and membership.

There is hereby established a Washington Fresh Peach Marketing Committee consisting of 12 members, each of whom shall have an alternate who shall have the same qualifications as the member for whom he is an alternate. Eight of the members and their respective alternates shall be growers or officers or employees of corporate growers. Four of the members and their respective alternates shall be handlers, or officers or employees of handlers. The 8 members of the committee who are growers or employees or officers of corporate growers are hereinafter referred to as "grower members" of the committee; and the 4 members of the committee who shall be handlers, or officers or employees of handlers, are hereinafter referred to as "handler members" of the committee. Four of the grower members and their respective alternates shall be producers of peaches in District 1, and four of the grower members and their respective alternates shall be producers of peaches in District 2. Two of the handler members and their respective alternates shall be handlers of peaches in District 1, and two of the handler members and their respective alternates shall be handlers of peaches in District 2.

§ 921.21 Term of office.

The term of office of each member and alternate member of the committee shall be for two years beginning April 1 and ending March 31: *Provided*, That the term of office of one-half the initial members and alternates from each district shall end March 31, 1961. Members and alternate members shall serve in such capacities for the portion of the term of office for which they are selected and have qualified and until their respective successors are selected and have qualified.

§ 921.22 Nominations.

(a) *Initial members.* Nominations for each of the initial members of the committee, together with nominations for the initial alternate members for each position, may be submitted to the Secretary by individual growers and handlers. Such nominations may be made by means of group meetings of the growers and handlers concerned in each district. Such nominations, if made, shall be filed with the Secretary, no later than the effective date of this part. In the event nominations for initial members and alternate members of the committee are not filed pursuant to, and within the time specified in, this section, the Secretary may select such initial members and alternate members without regard to nominations, but selections shall be on the basis of the representation provided for in § 921.20.

(b) *Successor members.* (1) The committee shall hold or cause to be held, not later than March 1 of each year, a meeting or meetings of growers and handlers in each district for the purpose of designating nominees for successor members and alternate members of the committee. At each such meeting a chairman and a secretary shall be selected by the growers and handlers eligible to participate therein. The chairman shall announce at the meeting the number of votes cast

for each person nominated for member or alternate member and shall submit promptly to the committee a complete report concerning such meeting. The committee shall, in turn, promptly submit a copy of each such report to the Secretary.

(2) Only growers, including duly authorized officers or employees of corporate growers, who are present at such nomination meetings may participate in the nomination and election of nominees for grower members and their alternates. Each grower shall be entitled to cast only one vote for each nominee to be elected in the district in which he produces peaches. No grower shall participate in the election of nominees in more than one district in any one fiscal year. If a person is both a grower and a handler of peaches, such person may vote either as a grower or as a handler but not as both.

(3) Only handlers, including duly authorized officers or employees of handlers, who are present at such nomination meetings, may participate in the nomination and election of nominees for handler members and their alternates. Each handler shall be entitled to cast only one vote for each nominee to be elected in the district in which he handles peaches, which vote shall be weighted by the volume of peaches handled by such handler during the then current fiscal year. No handler shall participate in the election of nominees in more than one district in any one fiscal year. If a person is both a grower and a handler of peaches, such person may vote either as a grower or as a handler but not as both.

§ 921.23 Selection.

From the nominations made pursuant to § 921.22, or from other qualified persons, the Secretary shall select the 8 grower members of the committee, the 4 handler members of the committee, and an alternate for each such member.

§ 921.24 Failure to nominate.

If nominations are not made within the time and in the manner prescribed in § 921.22, the Secretary may, without regard to nominations, select the members and alternate members of the committee on the basis of the representation provided for in § 921.20.

§ 921.25 Acceptance.

Any person selected by the Secretary as a member or as an alternate member of the committee shall qualify by filing a written acceptance with the Secretary promptly after being notified of such selection.

§ 921.26 Vacancies.

To fill any vacancy occasioned by the failure of any person selected as a member or as an alternate member of the committee to qualify, or in the event of the death, removal, resignation, or disqualification of any member or alternate member of the committee, a successor for the unexpired term of such member or alternate member of the committee shall be nominated and selected in the manner specified in §§ 921.22 and 921.23. If the names of nominees to fill any such vacancy are not made available to the Secretary within a reasonable time after such vacancy occurs, the Secretary may fill such vacancy without regard to nominations, which selection shall be made on the basis of representation provided for in § 921.20.

§ 921.27 Alternate members.

An alternate member of the committee, during the absence or at the request of the member for whom he is an alternate, shall act in the place and stead of such member and perform such other duties as assigned. In the event of the death, removal, resignation, or disqualification of a member, his alternate shall act for him until a successor for such member is selected and has qualified. In the event both a member of the committee and his alternate are unable to attend a committee meeting, the member or the committee may designate any other alternate member from the same district and group (handler or grower) to serve in such member's place and stead.

§ 921.30 Powers.

The committee shall have the following powers:

(a) To administer the provisions of this part in accordance with its terms;

(b) To receive, investigate, and report to the Secretary complaints of violations of the provisions of this part;

(c) To make and adopt rules and regulations to effectuate the terms and provisions of this part; and

(d) To recommend to the Secretary amendments to this part.

§ 921.31 Duties.

The committee shall have, among others, the following duties:

(a) To select a chairman and such other officers as may be necessary, and to define the duties of such officers;

(b) To appoint such employees, agents, and representatives as it may deem necessary, and to determine the compensation and to define the duties of each;

(c) To submit to the Secretary as soon as practicable after the beginning of each fiscal period a budget for such fiscal period, including a report in explanation of the items appearing therein and a recommendation as to the rate of assessment for such period;

(d) To keep minutes, books, and records which will reflect all of the acts and transactions of the committee and which shall be subject to examination by the Secretary;

(e) To prepare periodic statements of the financial operations of the committee and to make copies of each such statement available to growers and handlers for examination at the office of the committee;

(f) To cause its books to be audited by a competent accountant at least once each fiscal year and at such time as the Secretary may request;

(g) To act as intermediary between the Secretary and any grower or handler;

(h) To investigate and assemble data on the growing, handling, and marketing conditions with respect to peaches;

(i) To submit to the Secretary such available information as he may request;

(j) To notify producers and handlers of all meetings of the committee to consider recommendations for regulations;

(k) To give the Secretary the same notice of meetings of the committee as is given to its members;

(l) To investigate compliance with the provisions of this part;

(m) With the approval of the Secretary, to redefine the districts into which the production area is divided, and to reapportion the representation of any district on the committee: *Provided,* That any such changes shall reflect, insofar as practicable, shifts in peach production within the districts and the production area.

§ 921.32 Procedure.

(a) Eight members of the committee, including alternates acting for members, shall constitute a quorum; and any action of the committee shall require the concurring vote of at least seven members: *Provided,* That whenever more than 10 members are present at an assembled meeting, such requirement shall be at least 8 members.

(b) The committee may provide for simultaneous meetings of groups of its members assembled at two or more designated places: *Provided,* That such meetings shall be subject to the establishment of communication between all such groups and the availability of loud speaker receivers for each group so that each member may participate in the discussions and other actions the same as if the committee were assembled in one place. Any such meeting shall be considered as an assembled meeting.

(c) The committee may vote by telegraph, telephone, or other means of communication, and any votes so cast shall be confirmed promptly in writing: *Provided,* That if an assembled meeting is held, all votes shall be cast in person.

§ 921.33 Expenses and compensation.

The members of the committee, and alternates when acting as members, shall be reimbursed for expenses necessarily incurred by them in the performance of their duties under this part and may also receive compensation, as determined by the committee, which shall not exceed $10.00 per day or portion thereof spent in performing

such duties: *Provided,* That at its discretion the committee may request the attendance of one or more alternates at any or all meetings, notwithstanding the expected or actual presence of the respective members, and may pay expenses and compensation, as aforesaid.

§ 921.34 Annual report.

The committee shall, prior to the last day of each fiscal period, prepare and mail an annual report to the Secretary and make a copy available to each handler and grower who requests a copy of the report. This annual report shall contain at least: (a) A complete review of the regulatory operations during the fiscal period; (b) an appraisal of the effect of such regulatory operations upon the peach industry; and (c) any recommendations for changes in the program.

EXPENSES AND ASSESSMENTS

§ 921.40 Expenses.

The committee is authorized to incur such expenses as the Secretary finds are reasonable and likely to be incurred by the committee for its maintenance and functioning and to enable it to exercise its powers and perform its duties in accordance with the provisions of this part during each fiscal period. The funds to cover such expenses shall be acquired by the levying of assessments as prescribed in § 921.41.

§ 921.41 Assessments.

(a) Each person who first handles peaches shall, with respect to the peaches so handled by him, pay to the committee upon demand such person's pro rata share of the expenses which the Secretary finds will be incurred by the committee during each fiscal period. Each such person's share of such expenses shall be equal to the ratio between the total quantity of peaches handled by him as the first handler thereof during the applicable fiscal period and the total quantity of peaches so handled by all persons during the same fiscal period. The payment of assessments for the maintenance and functioning of the committee may be required under this part throughout the period it is in effect irrespective of whether particular provisions thereof are suspended or become inoperative.

(b) The Secretary shall fix the rate of assessment to be paid by each such person. At any time during or after the fiscal period, the Secretary may increase the rate of assessment in order to secure sufficient funds to cover any later finding by the Secretary relative to the expenses which may be incurred. Such increase shall be applied to all peaches handled during the applicable fiscal period. In order to provide funds for the administration of the provisions of this part during the first part of a fiscal period before sufficient operating income is available from assessments on the current year's shipments, the committee may accept the payment of assessments in advance, and may also borrow money for such purpose.

§ 921.42 Accounting.

(a) If, at the end of a fiscal period, the assessments collected are in excess of expenses incurred, such excess shall be accounted for as follows:

(1) Except as provided in paragraphs (a) (2) and (3) of this section, each person entitled to a proportionate refund of any excess assessment shall be credited with such refund against the operation of the following fiscal period unless such person demands repayment thereof, in which event it shall be paid to him: *Provided,* That any sum paid by a person in excess of his pro rata share of the expenses during any fiscal period may be applied by the committee at the end of such fiscal period to any outstanding obligations due the committee from such person.

(2) The committee, with the approval of the Secretary, may establish and maintain during one or more fiscal years an operating monetary reserve in an amount not to exceed approximately one fiscal year's operational expenses. Upon approval of the Secretary, funds in such reserve shall be available for use by the committee for all expenses authorized pursuant to § 921.40.

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(3) Upon termination of this part, any funds not required to defray the necessary expenses of liquidation shall be disposed of in such manner as the Secretary may determine to be appropriate: *Provided,* That to the extent practical, such funds shall be returned pro rate to the persons from whom such funds were collected.

(b) All funds received by the committee pursuant to the provisions of this part shall be used solely for the purposes specified in this part and shall be accounted for in the manner provided in this part. The Secretary may at any time require the committee and its members to account for all receipts and disbursements.

(c) Upon the removal or expiration of the term of office of any member of the committee, such member shall account for all receipts and disbursements and deliver all property and funds in his possession to his successor in office, and shall execute such assignments and other instruments as may be necessary or appropriate to vest in such successor full title to all of the property, funds, and claims vested in such member pursuant to this part.

Research

§ 921.45 Marketing research and development.

The committee, with the approval of the Secretary, may establish or provide for the establishment of marketing research and development projects designed to assist, improve, or promote the marketing, distribution, and consumption of peaches. The expense of such projects shall be paid from funds collected pursuant to § 921.41.

Regulations

§ 921.50 Marketing policy.

(a) Each season prior to making any recommendations pursuant to § 921.51, the committee shall submit to the Secretary a report setting forth its marketing policy for the ensuing season. Such marketing policy report shall contain information relative to:

(1) The estimated total production of peaches within the production area;

(2) The expected general quality and size of peaches in the production area and in other areas;

(3) The expected demand conditions for peaches in different market outlets;

(4) The expected shipments of peaches produced in the production area and in areas outside the production area;

(5) Supplies of competing commodities;

(6) Trend and level of consumer income;

(7) Other factors having a bearing on the marketing of peaches; and

(8) The type of regulations expected to be recommended during the season.

(b) In the event it becomes advisable, because of changes in the supply and demand situation for peaches, to modify substantially such marketing policy, the committee shall submit to the Secretary a revised marketing policy report setting forth the information prescribed in this section. The committee shall publicly announce the contents of each marketing policy report, including each revised marketing policy report, and copies thereof shall be maintained in the office of the committee where they shall be available for examination by growers and handlers.

§ 921.51 Recommendations for regulation.

(a) Whenever the committee deems it advisable to regulate the handling of any variety or varieties of peaches in the manner provided in § 921.52, it shall so recommend to the Secretary.

(b) In arriving at its recommendations for regulation pursuant to paragraph (a) of this section, the committee shall give consideration to current information with respect to the factors affecting the supply and demand for peaches during the period or periods when it is proposed that such regulation should be made effective. With each such recommendation for regulation, the committee shall submit to the Secretary the data and information on which such recommendation is predicated and such other available information as the Secretary may request.

§ 921.52 Issuance of regulations.

(a) The Secretary shall regulate, in the manner specified in this section, the handling of peaches whenever he finds, from the recommendations and information submitted by the committee, or from other available information, that such regulations will tend to effectuate the declared policy of the act. Such regulations may:

(1) Limit, during any period or periods, the shipments of any particular grade, size, quality, maturity, or pack, or any combination thereof, of any variety or varieties of peaches grown in any district or districts of the production area;

(2) Limit the shipment of peaches by establishing, in terms of grades, sizes, or both, minimum standards of quality and maturity during any period when season average prices are expected to exceed the parity level;

(3) Fix the size capacity, weight, dimensions, or pack of the container, or containers, which may be used in the packaging or handling of peaches.

(4) Prescribe requirements, as provided in this paragraph, applicable to exports of any variety of peaches which are different from those applicable to the handling of the same variety to other destinations.

(b) The committee shall be informed immediately of any such regulation issued by the Secretary, and the committee shall promptly give notice thereof to growers and handlers.

§ 921.53 Modification, suspension, or termination of regulations.

(a) In the event the committee at any time finds that, by reason of changed conditions, any regulations issued pursuant to § 921.52 should be modified, suspended, or terminated, it shall so recommend to the Secretary.

(b) Whenever the Secretary finds, from the recommendations and information submitted by the committee or from other available information, that a regulation should be modified, suspended, or terminated with respect to any or all shipments of peaches in order to effectuate the declared policy of the act, he shall modify, suspend, or terminate such regulation. On the same basis and in like manner the Secretary may terminate any such modification or suspension. If the Secretary finds that a regulation obstructs or does not tend to effectuate the declared policy of the act, he shall suspend or terminate such regulation. On the same basis and in like manner the Secretary may terminate any such suspension.

§ 921.54 Special purpose shipments.

(a) Except as otherwise provided in this section, any person may, without regard to the provisions of §§ 921.41, 921.52, 921.53, and 921.55, and the regulations issued thereunder, handle peaches (1) for consumption by charitable institutions; (2) for distribution by relief agencies; or (3) for commercial processing into products.

(b) Upon the basis of recommendations and information submitted by the committee, or from other available information, the Secretary may relieve from any or all requirements, under or established pursuant to § 921.41, § 921.52, § 921.53, or § 921.55, the handling of peaches in such minimum quantities, in such types of shipments, or for such specified purposes (including shipments to facilitate the conduct of marketing research and development projects established pursuant to § 921.45), as the committee, with approval of the Secretary, may prescribe.

(c) The committee shall, with the approval of the Secretary, prescribe such rules, regulations, and safeguards as it may deem necessary to prevent peaches handled under the provisions of this section from entering the channels of trade for other than the specific purposes authorized by this section. Such rules, regulations, and safeguards may include the requirements that handlers shall file applications and receive approval from the committee for authorization to handle peaches pursuant to this section, and that such applications be accompanied by a certification by the intended purchaser or receiver that the peaches will not be used for any purpose not authorized by this section.

§ 921.55 Inspection and certification.

Whenever the handling of any variety of peaches is regulated pursuant to § 921.52 or § 921.53, each handler who

handles peaches shall, prior thereto, cause such peaches to be inspected by the Federal or Federal-State Inspection Service, and certified by it as meeting the applicable requirements of such regulation: *Provided*, That inspection and certification shall be required for peaches which previously have been so inspected and certified only if such peaches have been regraded, resorted, repackaged, or in any other way further prepared for market. Promptly after inspection and certification, each such handler shall submit, or cause to be submitted, to the committee a copy of the certificate of inspection issued with respect to such peaches. The committee may, with the approval of the Secretary, prescribe rules and regulations modifying the inspection requirements of this section as to time and place such inspection shall be performed whenever it is determined it would not be practical to perform the required inspection at a particular location: *Provided*, That all such shipments shall comply with all regulations in effect.

Reports

§ 921.60 Reports.

(a) Upon request of the committee, made with the approval of the Secretary, each handler shall furnish to the committee, in such manner and at such time as it may prescribe, such reports and other information as may be necessary for the committee to perform its duties under this part. Such reports may include, but are not necessarily limited to, the following: (1) The quantities of each variety of peaches received by a handler; (2) the quantities disposed of by him, segregated as to the respective quantities subject to regulation and not subject to regulation; (3) the date of each such disposition and the identification of the carrier transporting such peaches, and (4) the destination of each shipment of such peaches.

(b) All such reports shall be held under appropriate protective classification and custody by the committee, or duly appointed employees thereof, so that the information contained therein which may adversely affect the competitive position of any handler in relation to other handlers will not be disclosed. Compilations of general reports from data submitted by handlers are authorized, subject to the prohibition of disclosure of individual handler's identities or operations.

(c) Each handler shall maintain for at least two succeeding years such records of the peaches received, and of peaches disposed of, by such handler as may be necessary to verify reports pursuant to this section.

Miscellaneous Provisions

§ 921.61 Compliance.

Except as provided in this part, no person shall handle peaches the shipment of which has been prohibited by the Secretary in accordance with the provisions of this part; and no person shall handle peaches except in conformity with the provisions and the regulations issued under this part.

§ 921.62 Right of the Secretary.

The members of the committee (including successors and alternates), and any agents, employees, or representatives thereof, shall be subject to removal or suspension by the Secretary at any time. Each and every regulation, decision, determination, or other act of the committee shall be subject to the continuing right of the Secretary to disapprove of the same at any time. Upon such disapproval, the disapproved action of the committee shall be deemed null and void, except as to acts done in reliance thereon or in accordance therewith prior to such disapproval by the Secretary.

§ 921.63 Effective time.

The provisions of this part and of any amendments thereto shall become effective at such time as the Secretary may declare above his signature, and shall continue in force until terminated in one of the ways specified in § 921.64.

§ 921.64 Termination.

(a) The Secretary may at any time terminate the provisions of this part by giving at least one day's notice by means of a press release or in any

other manner in which he may determine.

(b) The Secretary shall terminate or suspend the operation of any and all of the provisions of this part whenever he finds that such provisions do not tend to effectuate the declared policy of the act.

(c) The Secretary shall terminate the provisions of this part at the end of any fiscal period whenever he finds that continuance is not favored by the majority of producers who, during a representative period determined by the Secretary, were engaged in the production area in the production of peaches for market in fresh form: *Provided,* That such majority has produced for market during such period more than 50 percent of the volume of peaches produced for fresh market in the production area; but such termination shall be effective only if announced on or before March 31 of the then current fiscal period.

(d) The provisions of this part shall, in any event, terminate whenever the provisions of the act authorizing them cease to be in effect.

§ 921.65 Proceedings after termination.

(a) Upon the termination of the provisions of this part, the committee shall, for the purpose of liquidating the affairs of the committee, continue as trustees of all the funds and property then in its possession, or under its control, including claims for any funds unpaid or property not delivered at the time of such termination.

(b) The said trustees shall (1) continue in such capacity until discharged by the Secretary; (2) from time to time account for all receipts and disbursements and deliver all property on hand, together with all books and records of the committee and of the trustees, to such persons as the Secretary may direct; and (3) upon the request of the Secretary, execute such assignments or other instruments necessary or appropriate to vest in such person, full title and right to all of the funds, property, and claims vested in the committee or the trustees pursuant hereto.

(c) Any person to whom funds, property, or claims have been transferred or delivered, pursuant to this section, shall be subject to the same obligation imposed upon the committee and upon the trustees.

§ 921.66 Effect of termination or amendment.

Unless otherwise expressly provided by the Secretary, the termination of this part or of any regulation issued pursuant to this part, or the issuance of any amendment to either thereof, shall not (a) affect or waive any right, duty, obligation, or liability which shall have arisen or which may thereafter arise in connection with any provision of this part or any regulation issued under this part, or (b) release or extinguish any violation of this part or of any regulation issued under this part, or (c) affect or impair any rights or remedies of the Secretary or of any other person with respect to any such violation.

§ 921.67 Duration of immunities.

The benefits, privileges, and immunities conferred upon any person by virtue of this part shall cease upon the termination of this part, except with respect to acts done under and during the existence of this part.

§ 921.68 Agents.

The Secretary may, by designation in writing, name any officer or employee of the United States, or name any agency or division in the United States Department of Agriculture, to act as his agent or representative in connection with any of the provisions of this part.

§ 921.69 Derogation.

Nothing contained in the provisions of this part is, or shall be construed to be, in derogation or in modification of the rights of the Secretary or of the United States (a) to exercise any powers granted by the act or otherwise, or (b) in accordance with such powers, to act in the premises whenever such action is deemed advisable.

§ 921.70 Personal liability.

No member or alternate member of the committee and no employee or agent of the committee shall be held personally responsible, either individ-

ually or jointly with others, in any way whatsoever, to any person for errors in judgment, mistakes, or other acts, either of commission or omission, as such member, alternate, employee, or agent, except for acts of dishonesty, willful misconduct, or gross negligence.

§ 921.71 Separability.

If any provision of this part is declared invalid or the applicability thereof to any person, circumstance, or thing is held invalid, the validity of the remainder of this part or the applicability thereof to any other person, circumstance, or thing shall not be affected thereby.

Subpart—Rules and Regulations

§ 921.101 Changes in district representation.

Beginning with the 1982-83 fiscal period, the respresentation on the Washington Fresh Peach Marketing Committee is reapportioned as follows:

(a) Three grower members and their respective alternates shall be producers of peaches in District 1;

(b) Five grower members and their respective alternates shall be producers of peaches in District 2;

(c) One handler member and alternate shall be handlers of peaches in District 1;

(d) Three handler members and their respective alternates shall be handlers of peaches in District 2;

[47 FR 5995, Feb. 10, 1982]

§ 921.110 Waiver of inspection and certification.

(a) *Application.* Any handler (including a grower-handler packing and handling peaches of his own production), whose packing facilities are located in an area where a Washington State Horticultural Division Inspection Office or Federal-State Inspector is not readily available to perform the required inspection may, prior to shipment, apply to the committee for a permit authorizing a waiver of inspection. Applications shall be made on forms furnished by the committee and shall contain such information as the committee may require including: name and address of applicant, location of packing facility, distance of packing facility from the nearest inspection office, period (by approximate beginning and ending dates) during which applicant expects to ship peaches, estimated quantity of peaches applicant expects to ship to fresh market during such period, manner in which the majority of applicant's fruit will be marketed (i.e., transported by applicant to market, sold at orchard to truckers, etc.), areas or markets to which applicant expects to ship the majority of his peaches. The application shall also contain an agreement by applicant (1) not to ship or handle any peaches unless such peaches meet the grade, size, maturity, container, and all other requirements of the market agreement and order in effect at time of handling, (2) to report periodically to the committee on reporting forms furnished by the committee the following information on each shipment: quantity, variety, grade, minimum size, container, date of shipment, destination, name and address of buyer or receiver, and such other information as the committee may specify, (3) to pay applicable assessments on each shipment, (4) to have or cause to have each shipment of peaches inspected when such shipment is transported to a market or through a location en route to market where an inspector is available, and (5) to comply with such other safeguards as the committee may prescribe.

(b) *Issuance of permit.* Whenever the committee finds and determines from the information contained in the application or from other proof satisfactory to the committee that the applicant is entitled to a waiver from the inspection requirements of the marketing agreement and order at time of shipment, the committee shall issue a permit authorizing the applicant to ship peaches in accordance with these administrative regulations and the terms and conditions of such permit.

[29 FR 11144, Aug. 1, 1964]

§ 921.142 Reserve fund.

(a) The establishment of a reserve fund of an amount which shall not exceed approximately one fiscal year's

operational expenses is appropriate and necessary to the maintenance and functioning of the Washington Fresh Peach Marketing Committee. The committee is authorized to expend any funds in such reserve for expenses authorized pursuant to § 921.40.

(b) Terms used in this section shall have the same meaning as given to the respective term in said marketing agreement and order.

[26 FR 8661, Sept. 16, 1961. Redesignated at 26 FR 12751, Dec. 30, 1961, and amended at 31 FR 12478, Sept. 21, 1966. Further redesignated at 44 FR 73010, Dec. 17, 1979]

NOTE: After January 1, 1979, "Budget of Expenses and Rate of Assessment" regulations (e.g. sections .200 through .299) and "Handling" regulations (e.g. sections .319 through .399) which are in effect for a year or less, will not be carried in the Code of Federal Regulations. For FEDERAL REGISTER citations affecting these regulations, see the "List of CFR Sections Affected" in this volume.

Subpart—Grade and Size Regulation

§ 921.318 Peach Regulation 18.

(a) On and after August 1, 1981, no handler shall handle any lot of peaches unless such peaches meet the following applicable requirements, or are handled in accordance with paragraph (a)(5) of this section.

(1) *Minimum grade.* Such peaches shall grade at least Washington Extra Fancy Grade: *Provided,* That peaches which grade Washington Fancy Grade or better may be handled if they are packed in the western lug box or the standard peach box: And *Provided further,* That for the period ending March 31, 1986, peaches which grade Washington No. 2 Grade or better may be handled if they are packed in the western lug box.

(2) *Minimum size.* (i) Such peaches of any variety, except peaches of the Elberta varieties, when packed in any container except the standard peach box, shall measure not less than 2⅜ inches in diameter;

(ii) Such peaches of any variety when packed in the standard peach box shall measure not less than 2¼ inches in diameter; and

(iii) Such peaches of the Elberta varieties when packed in any container shall measure not less than 2¼ inches in diameter.

(3) *Uniform firmness.* Such peaches in individual containers shall have a reasonably uniform degree of firmness.

(4) *Pack.* (i) Such peaches in loose or jumble packs shall be in containers of a capacity equal to or greater than that of a western lug box and shall contain not less than 26 pounds net weight of peaches: *Provided,* That such containers of peaches having less than 26 pounds net weight may be handled if such containers are well filled; and

(ii) Such peaches other than peaches in loose or jumble packs in any containers shall meet the standard pack requirements as set forth in the Washington Standards for Peaches (Order No. 1212), or the U.S. Standards for Peaches (7 CFR 2851.1210 et seq.).

(5) Notwithstanding any other provisions of this section, any individual shipment of peaches sold by the producer or at an established packinghouse which meets each of the following requirements may be handled without regard to the provisions of this paragraph, of § 921.41 (Assessments), and of § 921.55 (Inspection and Certification) if:

(i) The shipment consists of peaches sold for home use and not for resale;

(ii) The shipment does not, in the aggregate, exceed 500 pounds, net weight, of peaches; and

(iii) Each container is stamped or marked with the words "not for resale" in letters at least one-half inch in height.

(b) *Definitions.* (1) The terms "Washington Extra Fancy Grade", "Washington Fancy" and "Washington No. 2 Grade", are specified in the Washington Standards for Peaches (effective October 18, 1971), issued by the State of Washington Department of Agriculture. Copies of the grade specifications are available from William J. Doyle, Chief, Fruit Branch, F&V, AMS, USDA, Washington, D.C. 20250, telephone 202-447-5975, and they are also available for inspection at the Office of the Federal Register Information Center, Room 8401, 1100 L Street, N.W., Washington, D.C. 20408. Chapter 16-436 of the Washing-

ton Administrative Code, Washington Standard for Peaches, 1983 ed. is incorporated by reference and was approved by the Director of the Federal Register. The materials are incorporated as they exist on the date of approval and a notice of any changes in the material will be published in the FEDERAL REGISTER.

(2) The term "loose or jumble pack" shall mean that the peaches are not placed in the container in rows, cups, compartments, or otherwise are not placed in the containers in symmetrical order; the term "standard peach box" shall mean a container with inside dimensions of 4¼ to 6 by 11½ by 16 inches; the term "western lug box" shall mean any container with inside dimensions of 7 by 11½ by 18 inches; the term "well filled" shall mean the level of fruit is filled at least to the top edge of the container; the term "diameter" shall mean the greatest distance measured through the center of the peach at right angles to a line running from the stem to the blossom end; and all other terms shall have the same meaning as when used in the marketing agreement and order.

[46 FR 38668, July 29, 1981, as amended at 49 FR 31256, Aug. 6, 1984; 50 FR 27412, July 3, 1985; 50 FR 34675, Aug. 27, 1985]

PART 922—APRICOTS GROWN IN DESIGNATED COUNTIES IN WASHINGTON

Subpart—Order Regulating Handling

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AUTHORITY: Secs. 1-19, 48 Stat. 31, as amended; 7 U.S.C. 601-674.

Subpart—Order Regulating Handling

SOURCE: 22 FR 3514, May 21, 1957, unless otherwise noted. Redesignated at 26 FR 12751, Dec. 30, 1961.

DEFINITIONS

§ 922.1 Secretary.

"Secretary" means the Secretary of Agriculture of the United States, or any officer or employee of the Department to whom authority has heretofore been delegated, or to whom authority may hereafter be delegated, to act in his stead.

§ 922.2 Act.

"Act" means Public Act No. 10, 73d Congress (May 12, 1933), as amended and as reenacted and amended by the Agricultural Marketing Agreement Act of 1937, as amended (48 Stat. 31, as amended; 7 U.S.C. 601 et seq.; 68 Stat. 906, 1047).

§ 922.3 Person.

"Person" means an individual, partnership, corporation, association, or any other business unit.

§ 922.4 Production area.

"Production area" means the counties of Okanogan, Chelan, Kittitas, Yakima, and Klickitat in the State of Washington and all of the counties in Washington lying east thereof.

[27 FR 5188, June 2, 1962]

§ 922.5 Apricots.

"Apricots" means all varieties of apricots, grown in the production area, classified botanically as Prunus armeniaca.

§ 922.6 Varieties.

"Varieties" means and includes all classifications or subdivisions of Prunus armeniaca.

§ 922.7 Fiscal period.

"Fiscal period" is synonymous with fiscal year and means the 12-month period ending on March 31 of each year or such other period that may be approved by the Secretary pursuant to recommendations by the committee.

§ 922.8 Committee.

"Committee" means the Washington Apricot Marketing Committee established pursuant to § 922.20.

§ 922.9 Grade.

"Grade" means any one of the officially established grades of apricots as defined and set forth in:

(a) United States Standards for Apricots (§§ 51.2925 to 51.2932 of this title) or amendments thereto, or modifications thereof, or variations based thereon;

(b) Standards for apricots issued by the State of Washington or amendments thereto, or modifications thereof, or variations based thereon.

§ 922.10 Size.

"Size" means the greatest diameter, measured through the center of the apricot, at right angles to a line running from the stem to the blossom end, or such other specification as may be established by the committee with the approval of the Secretary.

§ 922.11 Grower.

"Grower" is synonymous with producer and means any person who produces apricots for market and who has a proprietary interest therein: *Provided*, That a grower who is also a handler must have produced not less than 51 percent of the apricots handled by him during the previous season in order to qualify as a grower under §§ 922.20, 922.22, and 922.23.

§ 922.12 Handler.

"Handler" is synonymous with shipper and means any person (except a common or contract carrier transporting apricots owned by another person) who handles apricots.

§ 922.13 Handle.

"Handle" or "ship" means to sell, consign, deliver, or transport apricots

within the production area or between the production area and any point outside thereof: *Provided*, That the term "handle" shall not include the transportation within the production area of apricots from the orchard where grown to a packing facility located within such area for preparation for market.

[27 FR 5188, June 2, 1962]

§ 922.14 District.

"District" means the applicable one of the following described subdivisions of the production area, or such other subdivisions as may be prescribed pursuant to § 922.31(m):

(a) "District 1" shall include all counties within the production area not included in District 2.

(b) "District 2" shall include the Counties of Yakima, Benton, and Klickitat.

[22 FR 3514, May 21, 1957. Redesignated at 26 FR 12751, Dec. 30, 1961, and amended at 27 FR 5188, June 2, 1962]

§ 922.15 Export.

"Export" means to ship apricots beyond the continental boundaries of the United States.

§ 922.16 Pack.

"Pack" means the specific arrangement, size, weight, count, or grade of a quantity of apricots in a particular type and size of container, or any combination thereof.

§ 922.17 Container.

"Container" means a box, bag, crate, lug, basket, carton, package, or any other type of receptacle used in the packaging or handling of apricots.

ADMINISTRATIVE BODY

§ 922.20 Establishment and membership.

There is hereby established a Washington Apricot Marketing Committee consisting of twelve members, each of whom shall have an alternate who shall have the same qualifications as the member for whom he is an alternate. Eight of the members and their respective alternates shall be growers or officers or employees of corporate growers. Four of the members and their respective alternates shall be handlers, or officers or employees of corporate handlers. The eight members of the committee who are growers or employees or officers of corporate growers are referred to in this part as "grower members" of the committee; and the four members of the committee who shall be handlers, or officers or employees of corporate handlers, are referred to in this part as "handler members" of the committee. Four of the grower members and their respective alternates shall be producers of apricots in District 1, and four of the grower members and their respective alternates shall be producers of apricots in District 2. Two of the handler members and their respective alternates shall be handlers of apricots in District 1, and two of the handler members with their respective alternates shall be handlers of apricots in District 2.

§ 922.21 Term of office.

The term of office of each member and alternate member of the committee shall be for 2 years beginning April 1 and ending March 31: *Provided*, That the terms of office of one-half the initial members and alternates shall end March 31, 1958. Members and alternate members shall serve in such capacities for the portion of the term of office for which they are selected and have qualified and until their respective successors are selected and have qualified. The terms of office of successor members and alternates shall be so determined that one-half of the total committee membership ends each March 31.

§ 922.22 Nomination.

(a) *Initial members.* Nominations for each of the eight initial grower members and four initial handler members of the committee, together with nominations for the initial alternate members for each position may be submitted to the Secretary by individual growers and handlers. Such nominations may be made by means of group meetings of the growers and handlers concerned in each district. Such nominations, if made, shall be filed with the Secretary no later than the effec-

tive date of this part. In the event nominations for initial members and alternate members of the committee are not filed pursuant to, and within the time specified, in this section, the Secretary may select such initial members and alternate members without regard to nominations, but selections shall be on the basis of the representation provided for in § 922.20.

(b) *Successor members.* (1) The committee shall hold or cause to be held, not later than March 1 of each year, a meeting or meetings of growers and handlers in each district for the purpose of designating nominees for successor members and alternate members of the committee. At each such meeting a chairman and a secretary shall be selected by the growers and handlers eligible to participate therein. The chairman shall announce at the meeting the number of votes cast for each person nominated for member or alternate member and shall submit promptly to the committee a complete report concerning such meeting. The committee shall, in turn, promptly submit a copy of each such report to the Secretary.

(2) Only growers, including duly authorized officers or employees of corporate growers, who are present at such nomination meetings may participate in the nomination and election of nominees for grower members and their alternates. Each grower shall be entitled to cast only one vote for each nominee to be elected in the district in which he produces apricots. No grower shall participate in the election of nominees in more than one district in any one fiscal year. If qualified, a person may vote either as a grower or as a handler but not as both.

(3) Only handlers, including duly authorized officers or employees of corporate handlers, who are present at such nomination meetings, may participate in the nomination and election of nominees for handler members and their alternates. Each handler shall be entitled to cast only one vote for each nominee to be elected in the district in which he handles apricots. No handler shall participate in the election of nominees in more than one district in any one fiscal year. If qualified, a person may vote either as a grower or as a handler but not as both.

§ 922.23 Selection.

From the nominations made pursuant to § 922.22, or from other qualified persons, the Secretary shall select the eight grower members of the committee, the four handler members of the committee, and an alternate for each such member.

§ 922.24 Failure to nominate.

If nominations are not made within the time and in the manner prescribed in § 922.22, the Secretary may, without regard to nominations, select the members and alternate members of the committee on the basis of the representation provided for in § 922.20.

§ 922.25 Acceptance.

Any person selected by the Secretary as a member or as an alternate member of the committee shall qualify by filing a written acceptance with the Secretary promptly after being notified of such selection.

§ 922.26 Vacancies.

To fill any vacancy occasioned by the failure of any person selected as a member or as an alternate member of the committee to qualify, or in the event of the death, removal, resignation, or disqualification of any member or alternate member of the committee, a successor for the unexpired term of such member or alternate member of the committee shall be nominated and selected in the manner specified in §§ 922.22 and 922.23. If the names of nominees to fill any such vacancy are not made available to the Secretary within a reasonable time after such vacancy occurs, the Secretary may fill such vacancy without regard to nominations, which selection shall be made on the basis of representation provided for in § 922.20.

§ 922.27 Alternate members.

An alternate member of the committee, during the absence or at the request of the member for whom he is an alternate, shall act in the place and stead of such member and perform such other duties as assigned. In the

event of the death, removal, resignation, or disqualification of a member, his alternate shall act for him until a successor for such member is selected and has qualified. In the event both a member of the committee and his alternate are unable to attend a committee meeting, the member or the committee may designate any other alternate member from the same district and group (handler or grower) to serve in such member's place and stead.

§ 922.30 Powers.

The committee shall have the following powers:

(a) To administer the provisions of this part in accordance with its terms;

(b) To receive, investigate, and report to the Secretary complaints of violations of the provisions of this part;

(c) To make and adopt rules and regulations to effectuate the terms and provisions of this part; and

(d) To recommend to the Secretary amendments to this part.

§ 922.31 Duties.

The committee shall have, among others, the following duties:

(a) To select a chairman and such other officers as may be necessary, and to define the duties of such officers;

(b) To appoint such employees, agents, and representatives as it may deem necessary, and to determine compensation and to define the duties of each;

(c) To submit to the Secretary as soon as practicable after the beginning of each fiscal period a budget for such fiscal period, including a report in explanation of the items appearing therein and a recommendation as to the rate of assessment for such period;

(d) To keep minutes, books, and records which will reflect all of the acts and transactions of the committee and which shall be subject to examination by the Secretary;

(e) To prepare periodic statements of the financial operations of the committee and to make copies of each such statement available to growers and handlers for examination at the office of the committee;

(f) To cause its books to be audited by a competent accountant at least once each fiscal year and at such times as the Secretary may request;

(g) To act as intermediary between the Secretary and any grower or handler;

(h) To investigate and assemble data on the growing, handling, and marketing conditions with respect to apricots;

(i) To submit to the Secretary such available information as he may request;

(j) To notify producers and handlers of all meetings of the committee to consider recommendations for regulations;

(k) To give the Secretary the same notice of meetings of the committee as is given to its members;

(l) To investigate compliance with the provisions of this part;

(m) With the approval of the Secretary, to redefine the districts into which the production area is divided, and to reapportion the representation of any district on the committee: *Provided*, That any such changes shall reflect, insofar as practicable, shifts in apricot production within the districts and the production area.

§ 922.32 Procedure.

(a) Eight members of the committee, including alternates acting for members, shall constitute a quorum; and any action of the committee shall require the concurring vote of at least 7 members: *Provided*, That when two-thirds of the membership present is greater than 7, such requirement shall be two-thirds of such membership.

(b) The committee may provide for simultaneous meetings of groups of its members assembled at two or more designated places: *Provided*, That such meetings shall be subject to the establishment of communication between all such groups and the availability of loud speaker receivers for each group so that each member may participate in the discussions and other actions the same as if the committee were assembled in one place. Any such meeting shall be considered as an assembled meeting.

(c) The committee may vote by telegraph, telephone, or other means of

communication, and any votes so cast shall be confirmed promptly in writing: *Provided,* That if an assembled meeting is held, all votes shall be cast in person.

§ 922.33 Expenses and compensation.

The members of the committee, and alternates when acting as members, shall be reimbursed for expenses necessarily incurred by them in the performance of their duties under this part and may also receive compensation, as determined by the committee, which shall not exceed $10 per day or portion thereof spent in performing such duties: *Provided,* That at its discretion the committee may request the attendance of one or more alternates at any or all meetings, notwithstanding the expected or actual presence of the respective members, and may pay expenses and compensation, as aforesaid.

§ 922.34 Annual report.

The committee shall, prior to the last day of each fiscal period, prepare and mail an annual report to the Secretary and make a copy available to each handler and grower who requests a copy of the report. This annual report shall contain at least: (a) A complete review of the regulatory operations during the fiscal period; (b) an appraisal of the effect of such regulatory operations upon the apricot industry; and (c) any recommendations for changes in the program.

Expenses and Assessments

§ 922.40 Expenses.

The committee is authorized to incur such expenses as the Secretary finds are reasonable and likely to be incurred by the committee to enable it to exercise its powers and perform its duties in accordance with the provisions of this part during each fiscal period. The funds to cover such expenses shall be acquired by the levying of assessments as prescribed in § 922.41.

§ 922.41 Assessments.

(a) Each person who first handles apricots shall, with respect to the apricots so handled by him, pay to the committee upon demand such person's pro rata share of the expenses which the Secretary finds will be incurred by the committee during each fiscal period. Each such person's share of such expenses shall be equal to the ratio between the total quantity of apricots handled by him as the first handler thereof during the applicable fiscal period and the total quantity of apricots so handled by all persons during the same fiscal period. The payment of assessments for the maintenance and functioning of the committee may be required under this part throughout the period it is in effect irrespective of whether particular provisions thereof are suspended or become inoperative.

(b) The Secretary shall fix the rate of assessment to be paid by each such person. At any time during or after the fiscal period, the Secretary may increase the rate of assessment in order to secure sufficient funds to cover any later finding by the Secretary relative to the expenses which may be incurred. Such increase shall be applied to all apricots handled during the applicable fiscal period. In order to provide funds for the administration of the provisions of this part during the first part of a fiscal period before sufficient operating income is available from assessments on the current year's shipments, the committee may accept the payment of assessments in advance, and may also borrow money for such purpose.

§ 922.42 Accounting.

(a) If, at the end of a fiscal period, the assessments collected are in excess of expenses incurred, such excess shall be accounted for as follows:

(1) Except as provided in paragraph (a)(2) of this section each person entitled to a proportionate refund of any excess assessment shall be credited with such refund against the operation of the following fiscal period unless such person demands repayment thereof, in which event it shall be paid to him: *Provided,* That any sum paid by a person in excess of his pro rata share of the expenses during any fiscal period may be applied by the committee at the end of such

fiscal period to any outstanding obligations due the committee from such person.

(2) The Secretary, upon recommendation of the committee, may determine that it is appropriate for the maintenance and functioning of the committee that the funds remaining at the end of a fiscal period which are in excess of the expenses necessary for committee operations during such period may be carried over into following periods as a reserve. Such reserve may be established at an amount not to exceed approximately one fiscal period's operational expenses; and such reserve may be used to cover the necessary expenses of liquidation, in the event of termination of this part, and to cover the expenses incurred for the maintenance and functioning of the committee during any fiscal period when there is a crop failure, or during any period of suspension of any or all of the provisions of this part. Such reserve may also be used by the committee to finance its operations, during any fiscal period, prior to the time that assessment income is sufficient to cover such expenses; but any of the reserve funds so used shall be returned to the reserve as soon as assessment income is available for this purpose. Upon termination of this part, any funds not required to defray the necessary expenses of liquidation shall be disposed of in such manner as the Secretary may determine to be appropriate: *Provided,* That to the extent practical, such funds shall be returned pro rata to the persons from whom such funds were collected.

(b) All funds received by the committee pursuant to the provisions of this part shall be used solely for the purposes specified in this part and shall be accounted for in the manner provided in this part. The Secretary may at any time require the committee and its members to account for all receipts and disbursements.

(c) Upon the removal or expiration of the term of office of any member of the committee, such member shall account for all receipts and disbursements and deliver all property and funds in his possession to his successor in office, and shall execute such assignments and other instruments as may be necessary or appropriate to vest in such successor full title to all of the property, funds, and claims vested in such member pursuant to this part.

Research

§ 922.45 Marketing research and development.

The committee, with the approval of the Secretary, may establish or provide for the establishment of marketing research and development projects designed to assist, improve, or promote the marketing, distribution, and consumption of apricots. The expense of such projects shall be paid from funds collected pursuant to § 922.41.

Regulations

§ 922.50 Marketing policy.

(a) Each season prior to making any recommendations pursuant to § 922.51, the committee shall submit to the Secretary a report setting forth its marketing policy for the ensuing season. Such marketing policy report shall contain information relative to:

(1) The estimated total production of apricots within the production area;

(2) The expected general quality and size of apricots in the production area and in other areas;

(3) The expected demand conditions for apricots in different market outlets;

(4) The expected shipments of apricots produced in the production area and in areas outside the production area;

(5) Supplies of competing commodities;

(6) Trend and level of consumer income;

(7) Other factors having a bearing on the marketing of apricots; and

(8) The type of regulations expected to be recommended during the season.

(b) In the event it becomes advisable, because of changes in the supply and demand situation for apricots, to modify substantially such marketing policy, the committee shall submit to the Secretary a revised marketing policy report setting forth the information prescribed in this section. The committee shall publicly announce the contents of each marketing policy

report, including each revised marketing policy report, and copies thereof shall be maintained in the office of the committee where they shall be available for examination by growers and handlers.

§ 922.51 Recommendations for regulation.

(a) Whenever the committee deems it advisable to regulate the handling of any variety or varieties of apricots in the manner provided in § 922.52, it shall so recommend to the Secretary.

(b) In arriving at its recommendations for regulation pursuant to paragraph (a) of this section, the committee shall give consideration to current information with respect to the factors affecting the supply and demand for apricots during the period or periods when it is proposed that such regulation should be made effective. With each such recommendation for regulation, the committee shall submit to the Secretary the data and information on which such recommendation is predicated and such other available information as the Secretary may request.

§ 922.52 Issuance of regulations.

(a) The Secretary shall regulate, in the manner specified in this section, the handling of apricots whenever he finds from the recommendations and information submitted by the committee, or from other available information, that such regulations will tend to effectuate the declared policy of the act. Such regulations may:

(1) Limit, during any period or periods, the shipment of any particular grade, size, quality, maturity, or pack, or any combination thereof, of any variety or varieties of apricots grown in any district or districts of the production area;

(2) Limit the shipment of apricots by establishing, in terms of grades, sizes, or both, minimum standards of quality and maturity during any period when season average prices are expected to exceed the parity level;

(3) Fix the size, capacity, weight, dimensions, markings, or pack of the container, or containers, which may be used in the packaging or handling of apricots.

(b) The committee shall be informed immediately of any such regulation issued by the Secretary, and the committee shall promptly give notice thereof to growers and handlers.

[22 FR 3514, May 21, 1957. Redesignated at 26 FR 12751, Dec. 30, 1961, and amended at 27 FR 5188, June 2, 1962]

§ 922.53 Modification, suspension, or termination of regulations.

(a) In the event the committee at any time finds that, by reason of changed conditions, any regulations issued pursuant to § 922.52 should be modified, suspended, or terminated, it shall so recommend to the Secretary.

(b) Whenever the Secretary finds, from the recommendations and information submitted by the committee or from other available information, that a regulation should be modified, suspended, or terminated with respect to any or all shipments of apricots in order to effectuate the declared policy of the act, he shall modify, suspend or terminate such regulation. On the same basis and in like manner the Secretary may terminate any such modification or suspension. If the Secretary finds that a regulation obstructs or does not tend to effectuate the declared policy of the act, he shall suspend or terminate such regulation. On the same basis and in like manner the Secretary may terminate any such suspension.

§ 922.54 Special purpose shipments.

(a) Except as otherwise provided in this section, any person may, without regard to the provisions of §§ 922.41, 922.52, 922.53, and 922.55, and the regulations issued thereunder, handle apricots (1) for consumption by charitable institutions; (2) for distribution by relief agencies; or (3) for commercial processing into products.

(b) Upon the basis of recommendations and information submitted by the committee, or from other available information, the Secretary may relieve from any or all requirements, under or established pursuant to § 922.41, § 922.52, § 922.53, or § 922.55, the handling of apricots in such minimum quantities, or types of shipments, or for such specified purposes (including

shipments to facilitate the conduct of marketing research and development projects established pursuant to § 922.45), as the committee, with approval of the Secretary, may prescribe.

(c) The committee shall, with the approval of the Secretary, prescribe such rules, regulations, and safeguards as it may deem necessary to prevent apricots handled under the provisions of this section from entering the channels of trade for other than the specific purposes authorized by this section. Such rules, regulations, and safeguards may include the requirements that handlers shall file applications and receive approval from the committee for authorization to handle apricots pursuant to this section, and that such applications be accompanied by a certification by the intended purchaser or receiver that the apricots will not be used for any purpose not authorized by this section.

§ 922.55 Inspection and certification.

Whenever the handling of any variety of apricots is regulated pursuant to § 922.52 or § 922.53, each handler who handles apricots shall, prior thereto, cause such apricots to be inspected by the Federal-State Inspection Service and certified by it as meeting the applicable requirements of such regulation: *Provided,* That inspection and certification shall be required for apricots which previously have been so inspected and certified only if such apricots have been regraded, resorted, repackaged, or in any other way further prepared for market. Promptly after inspection and certification, each such handler shall submit, or cause to be submitted, to the committee a copy of the certificate of inspection issued with respect to such apricots. The committee may, with the approval of the Secretary, prescribe rules and regulations modifying the inspection requirements of this section as to time and place such inspection shall be performed whenever it is determined it would not be practical to perform the required inspection at a particular location: *Provided,* That all such shipments shall comply with all regulations in effect.

[22 FR 3514, May 21, 1957. Redesignated at 26 FR 12751, Dec. 30, 1961, and amended at 27 FR 5188, June 2, 1962]

Reports

§ 922.60 Reports.

(a) Upon request of the committee, made with the approval of the Secretary, each handler shall furnish to the committee, in such manner and at such time as it may prescribe, such reports and other information as may be necessary for the committee to perform its duties under this part. Such reports may include, but are not necessarily limited to, the following: (1) The quantities of each variety of apricots received by a handler, (2) the quantities disposed of by him segregated as to the respective quantities subject to regulation and not subject to regulation; (3) the date of each such disposition and the identification of the carrier transporting such apricots, and (4) the destination of each such shipment.

(b) All such reports shall be held under appropriate protective classification and custody by the committee, or duly appointed employees thereof, so that the information contained therein which may adversely affect the competitive position of any handler in relation to other handlers will not be disclosed. Compilations of general reports from data submitted by handlers is authorized, subject to the prohibition of disclosure of individual handler's identities or operations.

(c) Each handler shall maintain for at least two succeeding years such records of the apricots received, and of apricots disposed of, by such handler as may be necessary to verify reports pursuant to this section.

Miscellaneous Provisions

§ 922.61 Compliance.

Except as provided in this part, no person shall handle apricots, the shipment of which has been prohibited by the Secretary in accordance with the provisions of this part; and no person shall handle apricots except in conformity with the provisions of this part.

§ 922.62 Right of the Secretary.

The members of the committee (including successors and alternates), and any agents, employees, or representatives thereof, shall be subject to removal or suspension by the Secretary at any time. Each and every regulation, decision, determination, or other act of the committee shall be subject to the continuing right of the Secretary to disapprove of the same at any time. Upon such disapproval, the disapproved action of the committee shall be deemed null and void, except as to acts done in reliance thereon or in accordance therewith prior to such disapproval by the Secretary.

§ 922.63 Effective time.

The provisions of this part, and of any amendment thereto, shall become effective at such time as the Secretary may declare above his signature to this part, and shall continue in force until terminated in one of the ways specified in § 922.64.

§ 922.64 Termination.

(a) The Secretary may at any time terminate the provisions of this part by giving at least one day's notice by means of a press release or in any other manner in which he may determine.

(b) The Secretary shall terminate or suspend the operation of any and all of the provisions of this part whenever he finds that such provisions do not tend to effectuate the declared policy of the act.

(c) The Secretary shall terminate the provisions of this part at the end of any fiscal period whenever he finds that continuance is not favored by the majority of producers who, during a representative period determined by the Secretary, were engaged in the production area in the production of apricots for market: *Provided,* That such majority has produced for market during such period more than 50 percent of the volume of apricots produced for market in the production area; but such termination shall be effective only if announced on or before March 31 of the then current fiscal period.

(d) The provisions of this part shall, in any event, terminate whenever the provisions of the act authorizing them cease to be in effect.

§ 922.65 Proceedings after termination.

(a) Upon the termination of the provisions of this part, the committee shall, for the purpose of liquidating the affairs of the committee, continue as trustees of all the funds and property then in its possession, or under its control, including claims for any funds unpaid or property not delivered at the time of such termination.

(b) The said trustees shall (1) continue in such capacity until discharged by the Secretary; (2) from time to time account for all receipts and disbursements and deliver all property on hand, together with all books and records of the committee and of the trustees, to such person as the Secretary may direct; and (3) upon the request of the Secretary, execute such assignments or other instruments necessary or appropriate to vest in such person, full title and right to all of the funds, property, and claims vested in the committee or the trustees pursuant hereto.

(c) Any person to whom funds, property, or claims have been transferred or delivered pursuant to this section shall be subject to the same obligation imposed upon the committee and upon the trustees.

§ 922.66 Effect of termination or amendment.

Unless otherwise expressly provided by the Secretary, the termination of this subpart or of any regulation issued pursuant to this subpart, or the issuance of any amendment to either thereof, shall not (a) affect or waive any right, duty, obligation, or liability which shall have arisen or which may thereafter arise in connection with any provision of this subpart or any regulation issued under this subpart, or (b) release or extinguish any violation of this subpart or of any regulation issued under this subpart, or (c) affect or impair any rights or remedies of the Secretary or of any other person with respect to any such violation.

§ 922.67 Duration of immunities.

The benefits, privileges, and immunities conferred upon any person by virtue of this subpart shall cease upon the termination of this subpart, except with respect to acts done under and during the existence of this subpart.

§ 922.68 Agents.

The Secretary may, by designation in writing, name any officer or employee of the United States, or name any agency or division in the United States Department of Agriculture, to act as his agent or representative in connection with any of the provisions of this part.

§ 922.69 Derogation.

Nothing contained in the provisions of this part is, or shall be construed to be, in derogation or in modification of the rights of the Secretary or of the United States (a) to exercise any powers granted by the act or otherwise, or (b) in accordance with such powers, to act in the premises whenever such action is deemed advisable.

§ 922.70 Personal liability.

No member or alternate member of the committee and no employee or agent of the committee shall be held personally responsible, either individually or jointly with others, in any way whatsoever, to any person for errors in judgment, mistakes, or other act, either of commission or omission, as such member, alternate, employee, or agent, except for acts of dishonesty, willful misconduct, or gross negligence.

§ 922.71 Separability.

If any provision of this part is declared invalid, or the applicability thereof to any person, circumstance, or thing is held invalid, the validity of the remainder of this part or the applicability thereof to any other person, circumstance, or thing shall not be affected thereby.

Subpart—Container Exemption; Waivers of Inspection and Certification

§ 922.110 Container exemption.

Whenever container limitations are effective pursuant to § 922.52, a handler may make test shipments of apricots in experimental containers, approved by the committee, subject to the following:

(a) Test shipments shall be made only in connection with a container research project, or projects, being conducted by or in cooperation with the Washington Apricot Marketing Committee.

(b) The handler shall first make application to, and receive a permit from, the Washington Apricot Marketing Committee on a form of the committee to handle each experimental container proposed to be used by the handler for test shipments. Such application shall contain the following information:

(1) Name and address of the applicant and date of application;

(2) Description of the container, including size, weight, inside dimensions, and type of pack;

(3) Quantity of such containers proposed to be shipped.

(c) Approval of the application shall be evidenced by the issuance to the applicant by the committee of a permit which shall authorize the handling of apricots in such quantity of experimental containers as the committee may approve.

(d) With respect to each test shipment of apricots handled in experimental containers, the handler shall, prior to such handling, advise the committee as to (1) the number and type of the container or containers in the test shipment, (2) identification of the carrier, (3) name and address of the receiver, and (4) expected time of arrival at destination.

(e) Terms used in this section shall have the same meaning as when used in said marketing agreement and order (§§ 922.1 to 922.71).

[23 FR 4781, June 28, 1958. Redesignated at 26 FR 12751, Dec. 30, 1961]

§ 922.111 Waiver of inspection and certification.

(a) *Application.* Any handler (including a grower-handler packing and handling apricots of his own production), whose packing facilities are located in an area where a Washington State Horticultural Division Inspection Office or Federal-State Inspector is not readily available to perform the required inspection may, prior to shipment, apply to the Committee for a permit authorizing a waiver of inspection. Applications shall be made on forms furnished by the Committee and shall contain such information as the Committee may require including: Name and address of applicant, location of packing facility, distance of packing facility from the nearest inspection office, period (by approximate beginning and ending dates) during which applicant expects to ship apricots, estimated quantity of apricots applicant expects to ship to fresh market during such period, manner in which the majority of applicant's fruit will be marketed (i.e., transported by applicant to market, sold at orchard to truckers, etc.), areas or markets to which applicant expects to ship the majority of his apricots. The application shall also contain an agreement by applicant (1) not to ship or handle any apricots unless such apricots meet the grade, size, maturity, container, and all other requirements of the amended marketing agreement and order in effect at time of handling, (2) to report periodically to the Committee on reporting forms furnished by the Committee the following information on each shipment: quantity, variety, grade, minimum size, container, date of shipment, destination, name and address of buyer or receiver, and such other information as the Committee may specify, (3) to pay applicable assessments on each shipment, (4) to have or cause to have each shipment of apricots inspected when such shipment is transported to a market or through a location en route to market where an inspector is available, and (5) to comply with such other safeguards as the Committee may prescribe.

(b) *Issuance of permit.* Whenever the Committee finds and determines from the information contained in the application or from other proof satisfactory to the Committee that the applicant is entitled to a waiver from the inspection requirements of the amended marketing agreement and order at time of shipment, the Committee shall issue a permit authorizing the applicant to ship apricots in accordance with these administrative regulations and the terms and conditions of such permit.

[29 FR 9526, July 14, 1964]

§ 922.142 Reserve fund.

(a) The establishment of a reserve fund of an amount not greater than approximately one fiscal year's operational expenses is appropriate and necessary to the maintenance and functioning of the Washington Apricot Marketing Committee. The committee is hereby authorized to carry forward in the aforesaid reserve $5,765.09 which are excess assessment funds from the fiscal period ended March 31, 1960, and $787.61 which are excess assessment funds from the fiscal period ended March 31, 1961. Such reserve shall be used in accordance with the provisions of § 922.42 of the said marketing agreement and order (§§ 922.1 to 922.71).

(b) Terms used in this section shall have the same meaning as given to the respective term in said marketing agreement and order.

[26 FR 8664, Sept. 16, 1961. Redesignated at 26 FR 12751, Dec. 30, 1961 and 44 FR 73010, Dec. 17, 1979]

NOTE: After January 1, 1979, "Budget of Expenses and Rate of Assessment" regulations (e.g. sections .200 through .299) and "Handling" regulations (e.g. sections .322 through .399) which are in effect for a year or less, will not be carried in the Code of Federal Regulations. For FEDERAL REGISTER citations affecting these regulations, see the "List of CFR Sections Affected" in this volume.

Subpart—Container Regulations

§ 922.306 Apricot Regulation 6.

(a) After the effective time of this section, no handler shall handle any apricots unless such apricots are:

(1) In open containers or telescope fibreboard cartons with inside dimen-

sions of 7 x 11½ x 18 inches and the net weight of the apricots is not less than 28 pounds;

(2) In lidded 4-basket crates with inside dimensions of 4¾ x 16 x 16 inches and the net weight of the apricots is not less than 20 pounds;

(3) In closed containers with inside dimensions of 3¾–4¼x10½x15 inches and containing not less than 14 pounds, net weight of apricots, or in closed LA lugs (inside dimensions of 5¾x13½x16⅛ inches) or their carton equivalents: *Provided,* That apricots packed in such containers shall be row-faced or tray-packed; or

(4) In closed containers that are marked "12 pounds net weight" and contain not less than 12 pounds, net weight, of apricots which are of random size and are not row-faced; or

(5) If exported to Canada, in any of the containers specified in this paragraph (a) or in containers having inside dimensions of 16⅛ x 11½ inches with 4¾-inch end pieces and 3¾-inch side pieces.

(b) Notwithstanding any other provisions of this section, any individual shipment of apricots which, in the aggregate, does not exceed 500 pounds, net weight, may be handled without regard to the requirements specified in this section or in § 922.41 or § 922.55.

[31 FR 7674, May 28, 1966, as amended at 35 FR 10664, July 1, 1970; 36 FR 11714, June 18, 1971; 38 FR 17847, July 5, 1973]

Subpart—Grade and Size Regulation

§ 922.321 Apricot Regulation 21.

(a) On and after August 1, 1981, no handler shall handle any container of apricots unless such apricots meet the following applicable requirements, or are handled in accordance with paragraph (a)(3) of this section:

(1) *Minimum grade and maturity requirements.* Such apricots grade not less than Washington No. 1 and are at least reasonably uniform in color: *Provided,* That such apricots of the Moorpark variety in open containers shall be generally well matured; and

(2) *Minimum size requirements.* Such apricots measure not less than 1⅝ inches in diameter except that apricots of the Blenheim, Blenril, and Tilton varieties may measure not less than 1¼ inches: *Provided,* That not more than 10 percent, by count, of such apricots may fail to meet the applicable minimum diameter requirements.

(3) Notwithstanding any other provision of this section, any individual shipment of apricots which meets each of the following requirements may be handled without regard to the provisions of this paragraph, of § 922.41 (Assessments), and of § 922.55 (Inspection and Certification):

(i) The shipment consists of apricots sold for home use and not for resale;

(ii) The shipment does not, in the aggregate, exceed 500 pounds, net weight, of apricots; and

(iii) Each container is stamped or marked with the words "not for resale" in letters at least one-half inch in height.

(b) The terms "diameter" and "Washington No. 1" shall have the same meaning as when used in the State of Washington Department of Agriculture Standards for Apricots, effective May 31, 1966; "reasonably uniform in color" means that the apricots in the individual container do not show sufficient variation in color to materially affect the general appearance of the apricots; and "generally well matured" means that with respect to not less than 90 percent, by count, of the apricots in any lot of containers, and not less than 85 percent, by count, of such apricots in any container in such lot, at least 40 percent of the surface area of the fruit is at least as yellow as Shade 3 on U.S. Department of Agriculture Standard Ground Color Chart of Apples and Pears in Western States.

[46 FR 38668, July 29, 1981]

PART 923—SWEET CHERRIES GROWN IN DESIGNATED COUNTIES IN WASHINGTON

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GRADE, SIZE, CONTAINER AND PACK REGULATION

923.322 Washington Cherry Regulation 22.

AUTHORITY: Secs. 1-19, 48 Stat. 31, as amended; 7 U.S.C. 601-674.

SOURCE: 22 FR 3835, June 1, 1957, unless otherwise noted. Redesignated at 26 FR 12751, Dec. 30, 1961.

Subpart—Order Regulating Handling

DEFINITIONS

§ 923.1 Secretary.

"Secretary" means the Secretary of Agriculture of the United States, or any officer or employee of the Department to whom authority has heretofore been delegated, or to whom authority may hereafter be delegated, to act in his stead.

§ 923.2 Act.

"Act" means Public Act No. 10, 73d Congress (May 12, 1933), as amended and as reenacted and amended by the Agricultural Marketing Agreement Act of 1937, as amended (48 Stat. 31, as amended; 7 U.S.C. 601 et seq.; 68 Stat. 906, 1047).

§ 923.3 Person.

"Person" means an individual, partnership, corporation, association, or any other business unit.

§ 923.4 Production area.

"Production area" means all of the territory included within the Counties of Okanogan, Chelan, Douglas, Grant, Yakima and Benton within the State of Washington.

§ 923.5 Cherries.

"Cherries" means all varieties of sweet cherries grown in the production area, classified botanically as Prunus avium.

§ 923.6 Varieties.

"Varieties" means and includes all classifications or subdivisions of Prunus avium.

§ 923.7 Fiscal period.

"Fiscal period" is synonymous with fiscal year and means the 12-month period ending on March 31 of each year or such other period that may be approved by the Secretary pursuant to recommendations by the committee.

§ 923.8 Committee.

"Committee" means the Washington Cherry Marketing Committee established pursuant to § 923.20.

§ 923.9 Grade.

"Grade" means any one of the officially established grades of cherries as defined and set forth in:

(a) United States Standards for Sweet Cherries (§§ 51.2646 to 51.2660 of this title) or amendments thereto, or modifications thereof, or variations based thereon;

(b) Standards for sweet cherries issued by the State of Washington or amendments thereto, or modifications thereof, or variations based thereon.

§ 923.10 Size.

"Size" means the greatest diameter, measured through the center of the cherry, at right angles to a line running from the stem to the blossom end, or such other specification as may be established by the committee with the approval of the Secretary.

§ 923.11 Grower.

"Grower" is synonymous with producer and means any person who produces cherries for market and who has a proprietary interest therein.

§ 923.12 Handler.

"Handler" is synonymous with shipper and means any person (except a common or contract carrier transporting cherries owned by another person) who handles cherries.

§ 923.13 Handle.

"Handle" and "ship" are synonymous and mean to sell, consign, deliver, or transport cherries or cause the sale, consignment, delivery, or transportation of cherries or in any other way to place cherries, or cause cherries to be placed, in the current of the commerce from any point within the production area to any point outside thereof: *Provided,* That the term "handle" shall not include the transportation within the production area of cherries from the orchard where grown to a packing facility located within such area for preparation for market, or the delivery of such cherries to such packing facility for such preparation.

§ 923.14 District.

"District" means the applicable one of the following described subdivisions of the production area, or such other subdivisions as may be prescribed pursuant to § 923.31(m):

(a) "District 1" shall include the Counties of Chelan, Okanogan, Douglas, and Grant.

(b) "District 2" shall include the Counties of Yakima and Benton.

§ 923.15 Export.

"Export" means to ship cherries beyond the continental boundaries of the United States.

§ 923.16 Pack.

"Pack" means the specific arrangement, size, weight, count, or grade of a quantity of cherries in a particular type and size of container, or any combination thereof.

§ 923.17 Container.

"Container" means a box, bag, crate, lug, basket, carton, package, or any other type of receptacle used in the packaging or handling of cherries.

Administrative Body

§ 923.20 Establishment and membership.

There is hereby established a Washington Cherry Marketing Committee consisting of fifteen members, each of whom shall have an alternate who shall have the same qualifications as the member for whom he is an alternate. Ten of the members and their respective alternates shall be growers or officers or employees of corporate growers. Five of the members and their respective alternates shall be handlers, or officers or employees of handlers. The ten members of the committee who are growers or employ-

ees or officers of corporate growers are referred to in this part as "grower members" of the committee; and the five members of the committee who shall be handlers, or officers or employees of handlers, are referred to in this part as "handler members" of the committee. Four of the grower members and their respective alternates shall be producers of cherries in District 1, and six of the grower members and their respective alternates shall be producers of cherries in District 2. Two of the handler members and their respective alternates shall be handlers of cherries in District 1, and three of the handler members and their respective alternates shall be handlers of cherries in District 2.

§ 923.21 Term of office.

The term of office of each member and alternate member of the committee shall be for two years beginning April 1 and ending March 31: *Provided,* That the term of office of one-half the initial grower members and alternates from each district and one initial handler member from each district shall end March 31, 1958. Members and alternate members shall serve in such capacities for the portion of the term of office for which they are selected and have qualified and until their respective successors are selected and have qualified.

§ 923.22 Nomination.

(a) *Initial members.* Nominations for each of the ten initial grower members and five initial handler members of the committee, together with nominations for the initial alternate members for each position, may be submitted to the Secretary by individual growers and handlers. Such nominations may be made by means of group meetings of the growers and handlers concerned in each district. Such nominations, if made, shall be filed with the Secretary no later than the effective date of this part. In the event nominations for initial members and alternate members of the committee are not filed pursuant to, and within the time specified, in this section, the Secretary may select such initial members and alternate members without regard to nominations, but selections shall be on the basis of the representation provided for in § 923.20.

(b) *Successor members.* (1) The committee shall hold or cause to be held, not later than March 1 of each year, a meeting or meetings of growers and handlers in each district for the purpose of designating nominees for successor members and alternate members of the committee. At each such meeting a chairman and a secretary shall be selected by the growers and handlers eligible to participate therein. The chairman shall announce at the meeting the number of votes cast for each person nominated for member or alternate member and shall submit promptly to the committee a complete report concerning such meeting. The committee shall, in turn, promptly submit a copy of each such report to the Secretary.

(2) Only growers, including duly authorized officers or employees of corporate growers, who are present at such nomination meetings may participate in the nomination and election of nominees for grower members and their alternates. Each grower shall be entitled to cast only one vote for each nominee to be elected in the district in which he produces cherries. No grower shall participate in the election of nominees in more than one district in any one fiscal year. If a person is both a grower and a handler of cherries, such person may vote either as a grower or as a handler but not as both.

(3) Only handlers, including duly authorized officers or employees of handlers, who are present at such nomination meetings, may participate in the nomination and election of nominees for handler members and their alternates. Each handler shall be entitled to cast only one vote for each nominee to be elected in the district in which he handles cherries. No handler shall participate in the election of nominees in more than one district in any one fiscal year. If a person is both a grower and a handler of cherries, such person may vote either as a grower or as a handler but not as both.

§ 923.23 Selection.

From the nominations made pursuant to § 923.22, or from other qualified

persons, the Secretary shall select the ten grower members of the committee, the five handler members of the committee, and an alternate for each member.

§ 923.24 Failure to nominate.

If nominations are not made within the time and in the manner prescribed in § 923.22, the Secretary may, without regard to nominations, select the members and alternate members of the committee on the basis of the representation provided for in § 923.20.

§ 923.25 Acceptance.

Any person selected by the Secretary as a member or as an alternate member of the committee shall qualify by filing a written acceptance with the Secretary promptly after being notified of such selection.

§ 923.26 Vacancies.

To fill any vacancy occasioned by the failure of any person selected as a member or as an alternate member of the committee to qualify, or in the event of the death, removal, resignation, or disqualification of any member or alternate member of the committee, a successor for the unexpired term of such member or alternate member of the committee shall be nominated and selected in the manner specified in §§ 923.22 and 923.23. If the names of nominees to fill any such vacancy are not made available to the Secretary within a reasonable time after such vacancy occurs, the Secretary may fill such vacancy without regard to nominations, which selection shall be made on the basis of representation provided for in § 923.20.

§ 923.27 Alternate members.

An alternate member of the committee, during the absence or at the request of the member for whom he is an alternate, shall act in the place and stead of such member and perform such other duties as assigned. In the event of the death, removal, resignation, or disqualification of a member, his alternate shall act for him until a successor for such member is selected and has qualified. In the event both a member of the committee and his alternate are unable to attend a committee meeting, the member of the committee may designate any other alternate member from the same district and group (handler or grower) to serve in such member's place and stead.

§ 923.30 Powers.

The committee shall have the following powers:

(a) To administer the provisions of this part in accordance with its terms;

(b) To receive, investigate, and report to the Secretary complaints of violations of the provisions of this part;

(c) To make and adopt rules and regulations to effectuate the terms and provisions of this part; and

(d) To recommend to the Secretary amendments to this part.

§ 923.31 Duties.

The committee shall have, among others, the following duties:

(a) To select a chairman and such other officers as may be necessary, and to define the duties of such officers;

(b) To appoint such employees, agents, and representatives as it may deem necessary, and to determine the compensation and to define the duties of each;

(c) To submit to the Secretary as soon as practicable after the beginning of each fiscal period a budget for such fiscal period, including a report in explanation of the items appearing therein and a recommendation as to the rate of assessment for such period;

(d) To keep minutes, books, and records which will reflect all of the acts and transactions of the committee and which shall be subject to examination by the Secretary;

(e) To prepare periodic statements of the financial operations of the committee and to make copies of each such statement available to growers and handlers for examination at the office of the committee;

(f) To cause its books to be audited by a competent accountant at least once each fiscal year and at such time as the Secretary may request;

(g) To act as intermediary between the Secretary and any grower or handler;

(h) To investigate and assemble data on the growing, handling, and marketing conditions with respect to cherries;

(i) To submit to the Secretary such available information as he may request;

(j) To notify producers and handlers of all meetings of the committee to consider recommendations for regulations;

(k) To give the Secretary the same notice of meetings of the committee as is given to its members;

(l) To investigate compliance with the provisions of this part;

(m) With the approval of the Secretary, to redefine the districts into which the production area is divided, and to reapportion the representation of any district on the committee: *Provided*, That any such changes shall reflect, insofar as practicable, shifts in cherry production within the districts and the production area.

§ 923.32 Procedure.

(a) Twelve members of the committee, including alternates acting for members, shall constitute a quorum; and any action of the committee shall require the concurring vote of at least nine members.

(b) The committee may provide for simultaneous meetings of groups of its members assembled at two or more designated places: *Provided*, That such meetings shall be subject to the establishment of communication between all such groups and the availability of loud speaker receivers for each group so that each member may participate in the discussions and other actions the same as if the committee were assembled in one place. Any such meeting shall be considered as an assembled meeting.

(c) The committee may vote by telegraph, telephone, or other means of communication, and any votes so cast shall be confirmed promptly in writing: *Provided*, That if an assembled meeting is held, all votes shall be cast in person.

§ 923.33 Expenses and compensation.

The members of the committee, and alternates when acting as members, shall be reimbursed for expenses necessarily incurred by them in the performance of their duties under this part and may also receive compensation, as determined by the committee, which shall not exceed $10 per day or portion thereof spent in performing such duties: *Provided*, That at its discretion the committee may request the attendance of one or more alternates at any or all meetings, notwithstanding the expected or actual presence of the respective members, and may pay expenses and compensation, as aforesaid.

§ 923.34 Annual report.

The committee shall, prior to the last day of each fiscal period, prepare and mail an annual report to the Secretary and make a copy available to each handler and grower who requests a copy of the report. This annual report shall contain at least: (a) A complete review of the regulatory operations during the fiscal period; (b) an appraisal of the effect of such regulatory operations upon the cherry industry; and (c) any recommendations for changes in the program.

Expenses and Assessments

§ 923.40 Expenses.

The committee is authorized to incur such expenses as the Secretary finds are reasonable and likely to be incurred by the committee to enable it to exercise its powers and perform its duties in accordance with the provisions of this part during each fiscal period. The funds to cover such expenses shall be acquired by the levying of assessments as prescribed in § 923.41.

§ 923.41 Assessments.

(a) Each person who first handles cherries shall, with respect to the cherries so handled by him, pay to the committee upon demand such person's pro rata share of the expenses which the Secretary finds will be incurred by the committee during each fiscal period. Each such person's share of such expenses shall be equal to the ratio between the total quantity of cherries handled by him as the first handler thereof during the applicable fiscal period and the total quantity of

cherries so handled by all persons during the same fiscal period. The payment of assessments for the maintenance and functioning of the committee may be required under this part throughout the period it is in effect irrespective of whether particular provisions thereof are suspended or become inoperative.

(b) The Secretary shall fix the rate of assessment to be paid by each such person. At any time during or after the fiscal period, the Secretary may increase the rate of assessment in order to secure sufficient funds to cover any later finding by the Secretary relative to the expenses which may be incurred. Such increase shall be applied to all cherries handled during the applicable fiscal period. In order to provide funds for the administration of the provisions of this part during the first part of a fiscal period before sufficient operating income is available from assessments on the current year's shipments, the committee may accept the payment of assessments in advance, and may also borrow money for such purpose.

§ 923.42 Accounting.

(a) If, at the end of a fiscal period, the assessments collected are in excess of expenses incurred, such excess shall be accounted for as follows:

(1) Except as provided in paragraph (a)(2) of this section, each person entitled to a proportionate refund of any excess assessment shall be credited with such refund against the operation of the following fiscal period unless such person demands repayment thereof, in which event it shall be paid to him: *Provided,* That any sum paid by a person in excess of his pro rata share of the expenses during any fiscal period may be applied by the committee at the end of such fiscal period to any outstanding obligations due the committee from such person.

(2) The Secretary, upon recommendation of the committee, may determine that it is appropriate for the maintenance and functioning of the committee that the funds remaining at the end of a fiscal period which are in excess of the expenses necessary for committee operations during such period may be carried over into following periods as a reserve. Such reserve may be established at an amount not to exceed approximately one fiscal period's operational expenses; and such reserve may be used to cover the necessary expenses of liquidation, in the event of termination of this part, and to cover the expenses incurred for the maintenance and functioning of the committee during any fiscal period when there is a crop failure, or during any period of suspension of any or all of the provisions of this part. Such reserve may also be used by the committee to finance its operations, during any fiscal period, prior to the time that assessment income is sufficient to cover such expenses; but any of the reserve funds so used shall be returned to the reserve as soon as assessment income is available for this purpose. Upon termination of this part, any funds not required to defray the necessary expenses of liquidation shall be disposed of in such manner as the Secretary may determine to be appropriate: *Provided,* That to the extent practical, such funds shall be returned pro rata to the persons from whom such funds were collected.

(b) All funds received by the committee pursuant to the provisions of this part shall be used solely for the purposes specified in this part and shall be accounted for in the manner provided in this part. The Secretary may at any time require the committee and its members to account for all receipts and disbursements.

(c) Upon the removal or expiration of the term of office of any member of the committee, such member shall account for all receipts and disbursements and deliver all property and funds in his possession to his successor in office, and shall execute such assignments and other instruments as may be necessary or appropriate to vest in such successor full title to all of the property, funds, and claims vested in such member pursuant to this part.

RESEARCH

§ 923.45 Marketing research and development.

The committee, with the approval of the Secretary, may establish or pro-

vide for the establishment of marketing research and development projects designed to assist, improve, or promote the marketing, distribution, and consumption of cherries. The expense of such projects shall be paid from funds collected pursuant to § 923.41.

REGULATIONS

§ 923.50 Marketing policy.

(a) Each season prior to making any recommendations pursuant to § 923.51, the committee shall submit to the Secretary a report setting forth its marketing policy for the ensuing season. Such marketing policy report shall contain information relative to:

(1) The estimated total production of cherries within the production area;

(2) The expected general quality and size of cherries in the production area and in other areas;

(3) The expected demand conditions for cherries in different market outlets;

(4) The expected shipments of cherries produced in the production area and in areas outside the production area;

(5) Supplies of competing commodities;

(6) Trend and level of consumer income;

(7) Other factors having a bearing on the marketing of cherries; and

(8) The type of regulations expected to be recommended during the season.

(b) In the event it becomes advisable, because of changes in the supply and demand situation for cherries, to modify substantially such marketing policy, the committee shall submit to the Secretary a revised marketing policy report setting forth the information prescribed in this section. The committee shall publicly announce the contents of each marketing policy report, including each revised marketing policy report, and copies thereof shall be maintained in the office of the committee where they shall be available for examination by growers and handlers.

§ 923.51 Recommendations for regulation.

(a) Whenever the committee deems it advisable to regulate the handling of any variety or varieties of cherries in the manner provided in § 923.52, it shall so recommend to the Secretary.

(b) In arriving at its recommendations for regulation pursuant to paragraph (a) of this section, the committee shall give consideration to current information with respect to the factors affecting the supply and demand for cherries during the period or periods when it is proposed that such regulation should be made effective. With each such recommendation for regulation, the committee shall submit to the Secretary the data and information on which such recommendation is predicated and such other available information as the Secretary may request.

§ 923.52 Issuance of regulations.

(a) The Secretary shall regulate, in the manner specified in this section, the handling of cherries whenever he finds, from the recommendations and information submitted by the committee, or from other available information, that such regulations will tend to effectuate the declared policy of the act. Such regulations may:

(1) Limit, during any period or periods, the shipment of any particular grade, size, quality, maturity, or pack, or any combination thereof, of any variety or varieties of cherries grown in any district or districts of the production area;

(2) Limit the shipment of cherries by establishing, in terms of grades, sizes, or both, minimum standards of quality and maturity during any period when season average prices are expected to exceed the parity level;

(3) Fix the size, capacity, weight, dimensions, or pack of the container, or containers, which may be used in the packaging or handling of cherries.

(b) The committee shall be informed immediately of any such regulation issued by the Secretary, and the committee shall promptly give notice thereof to growers and handlers.

§ 923.53 Modification, suspension, or termination of regulations.

(a) In the event the committee at any time finds that, by reason of changed conditions, any regulations issued pursuant to § 923.52 should be

modified, suspended, or terminated, it shall so recommend to the Secretary.

(b) Whenever the Secretary finds, from the recommendations and information submitted by the committee or from other available information, that a regulation should be modified, suspended, or terminated with respect to any or all shipments of cherries in order to effectuate the declared policy of the act, he shall modify, suspend, or terminate such regulation. On the same basis and in like manner the Secretary may terminate any such modification or suspension. If the Secretary finds that a regulation obstructs or does not tend to effectuate the declared policy of the act, he shall suspend or terminate such regulation. On the same basis and in like manner the Secretary may terminate any such suspension.

§ 923.54 Special purpose shipments.

(a) Except as otherwise provided in this section, any person may, without regard to the provisions of §§ 923.41, 923.52, 923.53, and 923.55, and the regulations issued thereunder, handle cherries (1) for consumption by charitable institutions; (2) for distribution by relief agencies; or (3) for commercial processing into products.

(b) Upon the basis of recommendations and information submitted by the committee, or from other available information, the Secretary may relieve from any or all requirements, under or established pursuant to § 923.41, § 923.52, § 923.53, or § 923.55, the handling of cherries in such minimum quantities, or types of shipments, or for such specified purposes (including shipments to facilitate the conduct of marketing research and development projects established pursuant to § 923.45), as the committee, with approval of the Secretary, may prescribe.

(c) The committee shall, with the approval of the Secretary, prescribe such rules, regulations, and safeguards as it may deem necessary to prevent cherries handled under the provisions of this section from entering the channels of trade for other than the specific purposes authorized by this section. Such rules, regulations, and safeguards may include the requirements that handlers shall file applications and receive approval from the committee for authorization to handle cherries pursuant to this section, and that such applications be accompanied by a certification by the intended purchaser or receiver that the cherries will not be used for any purpose not authorized by this section.

§ 923.55 Inspection and certification.

Whenever the handling of any variety of cherries is regulated pursuant to § 923.52 or § 923.53, each handler who handles cherries shall, prior thereto, cause such cherries to be inspected by the Federal-State Inspection Service, and certified by it as meeting the applicable requirements of such regulation: *Provided*, That inspection and certification shall be required for cherries which previously have been so inspected and certified only if such cherries have been regraded, resorted, repackaged, or in any other way further prepared for market. Promptly after inspection and certification, each such handler shall submit, or cause to be submitted, to the committee a copy of the certificate of inspection issued with respect to such cherries.

Reports

§ 923.60 Reports.

(a) Upon request of the committee, made with the approval of the Secretary, each handler shall furnish to the committee, in such manner and at such time as it may prescribe, such reports and other information as may be necessary for the committee to perform its duties under this part. Such reports may include, but are not necessarily limited to, the following: (1) The quantities of each variety of cherries received by a handler; (2) the quantities disposed of by him, segregated as to the respective quantities subject to regulation and not subject to regulation; (3) the date of each such disposition and the identification of the carrier transporting such cherries, and (4) the destination of each shipment of such cherries.

(b) All such reports shall be held under appropriate protective classification and custody by the committee, or duly appointed employees thereof, so that the information contained

therein which may adversely affect the competitive position of any handler in relation to other handlers will not be disclosed. Compilations of general reports from data submitted by handlers are authorized, subject to the prohibition of disclosure of individual handler's identities or operations.

(c) Each handler shall maintain for at least two succeeding years such records of the cherries received, and of cherries disposed of, by such handler as may be necessary to verify reports pursuant to this section.

Miscellaneous Provisions

§ 923.61 Compliance.

Except as provided in this part, no person shall handle cherries, the shipment of which has been prohibited by the Secretary in accordance with the provisions of this part: And no person shall handle cherries except in conformity with the provisions of this part.

§ 923.62 Right of the Secretary.

The members of the committee (including successors and alternates), and any agents, employees, or representatives thereof, shall be subject to removal or suspension by the Secretary at any time. Each and every regulation, decision, determination, or other act of the committee shall be subject to the continuing right of the Secretary to disapprove of the same at any time. Upon such disapproval, the disapproved action of the committee shall be deemed null and void, except as to acts done in reliance thereon or in accordance therewith prior to such disapproval by the Secretary.

§ 923.63 Effective time.

The provisions of this part, and of any amendment thereto, shall become effective at such time as the Secretary may declare above his signature to this part, and shall continue in force until terminated in one of the ways specified in § 923.64.

§ 923.64 Termination.

(a) The Secretary may at any time terminate the provisions of this part by giving at least one day's notice by means of a press release or in any other manner in which he may determine.

(b) The Secretary shall terminate or suspend the operation of any and all of the provisions of this part whenever he finds that such provisions do not tend to effectuate the declared policy of the act.

(c) The Secretary shall terminate the provisions of this part at the end of any fiscal period whenever he finds that continuance is not favored by the majority of producers who, during a representative period, determined by the Secretary, were engaged in the production area in the production of cherries for market: *Provided*, That such majority has produced for market during such period more than 50 percent of the volume of cherries produced for market in the production area; but such termination shall be effective only if announced on or before March 31 of the then current fiscal period.

(d) The provisions of this part shall, in any event, terminate whenever the provisions of the act authorizing them cease to be in effect.

§ 923.65 Proceedings after termination.

(a) Upon the termination of the provisions of this part, the committee shall, for the purpose of liquidating the affairs of the committee, continue as trustees of all the funds and property then in its possession, or under its control, including claims for any funds unpaid or property not delivered at the time of such termination.

(b) The said trustees shall (1) continue in such capacity until discharged by the Secretary; (2) from time to time account for all receipts and disbursements and deliver all property on hand, together with all books and records of the committee and of the trustees, to such person as the Secretary may direct; and (3) upon the request of the Secretary, execute such assignments or other instruments necessary or appropriate to vest in such person, full title and right to all of the funds, property, and claims vested in the committee or the trustees pursuant hereto.

(c) Any person to whom funds, property, or claims have been transferred

or delivered pursuant to this section shall be subject to the same obligation imposed upon the committee and upon the trustees.

§ 923.66 Effect of termination or amendment.

Unless otherwise expressly provided by the Secretary, the termination of this subpart or of any regulation issued pursuant to this subpart, or the issuance of any amendment to either thereof, shall not (a) affect or waive any right, duty, obligation, or liability which shall have arisen or which may thereafter arise in connection with any provision of this subpart or any regulation issued under this subpart, or (b) release or extinguish any violation of this subpart or of any regulation issued under this subpart, or (c) affect or impair any rights or remedies of the Secretary or of any other person with respect to any such violation.

§ 923.67 Duration of immunities.

The benefits, privileges, and immunities conferred upon any person by virtue of this subpart shall cease upon the termination of this subpart, except with respect to acts done under and during the existence of this subpart.

§ 923.68 Agents.

The Secretary may, by designation in writing, name any officer or employee of the United States, or name any agency or division in the United States Department of Agriculture, to act as his agent or representative in connection with any of the provisions of this part.

§ 923.69 Derogation.

Nothing contained in the provisions of this part is, or shall be construed to be, in derogation or in modification of the rights of the Secretary or of the United States (a) to exercise any powers granted by the act or otherwise, or (b) in accordance with such powers, to act in the premises whenever such action is deemed advisable.

§ 923.70 Personal liability.

No member or alternate member of the committee and no employee or agent of the committee shall be held personally responsible, either individually or jointly with others, in any way whatsoever, to any person for errors in judgment, mistakes, or other acts, either of commission, or omission, as such member, alternate, employee, or agent, except for acts of dishonesty, willful misconduct, or gross negligence.

§ 923.71 Separability.

If any provision of this part is declared invalid, or the applicability thereof to any person, circumstance, or thing is held invalid, the validity of the remainder of this part or the applicability thereof to any other person, circumstance, or thing shall not be affected thereby.

§ 923.142 Reserve fund.

(a) The establishment of a reserve fund of an amount which shall not exceed approximately 1 fiscal year's operational expenses is appropriate and necessary to the maintenance and functioning of the Washington Cherry Marketing Committee. The committee is authorized to expend any funds in such reserve for expenses authorized pursuant to § 923.42.

(b) Terms used in this section shall have the same meaning as given to the respective term in said marketing agreement and order.

[33 FR 9147, June 21, 1968. Redesignated at 44 FR 73011, Dec. 17, 1979]

NOTE: After January 1, 1979, "Budget of Expenses and Rate of Assessment" regulations (e.g. sections .200 through .299) and "Handling" regulations (e.g. sections .323 through .399) which are in effect for a year or less, will not be carried in the Code of Federal Regulations. For FEDERAL REGISTER citations affecting these regulations, see the "List of CFR Sections Affected" in this volume.

GRADE, SIZE, CONTAINER AND PACK REGULATION

§ 923.322 Washington Cherry Regulation 22.

On and after July 3, 1984:

(a) *Grade and size.* No handler shall handle, except as otherwise provided in this section, any lot of cherries, except cherries of the Rainier, Royal

Anne, and similar varieties commonly referred to as "light sweet cherries", unless such cherries meet each of the following applicable requirements:

(1) Washington No. 1 grade except that the following tolerances, by count, of the cherries in the lot shall apply in lieu of the tolerances for defects provided in the Washington State Standards for Grades of Sweet Cherries: *Provided,* That a total of 10 percent for defects including in this amount not more than 5 percent, by count, of the cherries in the lot, for serious damage, and including in this latter amount not more than one percent, by count, of the cherries in the lot, for cherries affected by decay: *Provided further,* That the contents of individual packages in the lot are not limited as to the percentage of defects but the total of the defects of the entire lot shall be within the tolerances specified.

(2) At least 95 percent, by count, of the cherries in the lot shall measure not less than $^{5}\%_{64}$ inch in diameter, except as provided in paragraphs (a)(3) and (b)(2)(ii) of this section.

(3) At least 90 percent, by count, of the cherries in any lot of face-packed containers or any containers of 20 pounds, net weight, or more shall measure not less than $^{5}\%_{64}$ inch in diameter and not more than 5 percent, by count, may be less than $^{5}\%_{64}$ inch in diameter.

(b) *Containers.* No handler shall handle any lot of cherries, except cherries of the Rainier, Royal Anne, and similar varieties commonly referred to as "light sweet cherries", unless such cherries are in containers which meet each of the following applicable requirements:

(1) The net weight of loose packed (jumble-filled) cherries in any container shall be 12 pounds or 20 pounds, or greater. The net weight of face-packed cherries in any container shall be 15 pounds.

(2) Subject to the provisions of paragraphs (b)(2) (i) and (ii) of this section, shipments of cherries may be handled in such experimental containers as have been approved by the Washington Cherry Marketing Committee.

(i) All shipments handled in such containers shall be under the supervision of the committee; and

(ii) At least 90 percent, by count, of the cherries in any lot of such containers shall measure not less than $^{5}\%_{64}$ inch in diameter, and not more than 5 percent, by count, may be less than $^{5}\%_{64}$ inch in diameter.

(c) *Pack.* (1) When containers of cherries are marked with one of the row count/row size designations shown in Column 1 of the following table, at least 90 percent, by count, of the cherries in any lot shall be not smaller than the corresponding diameter shown in Column 2 of such table: *Provided,* That of the 10 percent smaller cherries permitted not more than 5 percent, by count, may be smaller than $^{5}\%_{64}$ inch in diameter.

TABLE

Column 1, row count/row size	Column 2, diameter (inches)
9	$^{7}\%_{64}$
10	$^{6}\%_{64}$
11	$^{5}\%_{64}$

(2) When containers of cherries are marked with a minimum diameter of $^{5}\%_{64}$ inch, at least 90 percent, by count, of the cherries in any lot shall be not smaller than such minimum diameter: *Provided,* That not more than 5 percent, by count, may be smaller than $^{5}\%_{64}$ inch in diameter.

(3) When containers of cherries are marked with a minimum diameter larger than $^{5}\%_{64}$ inch, at least 90 percent, by count, of the cherries in any lot shall be not smaller than the diameter so marked: *Provided,* That of the 10 percent smaller cherries permitted not more than 5 percent, by count, may be smaller than $^{5}\%_{64}$ inch in diameter.

(d) *Exceptions.* Any individual shipment of cherries which meets each of the following requirements may be handled without regard to the provisions of paragraphs (a), (b), and (c) of this section, and of §§ 923.41 and 923.55 of this part:

(1) The shipment consists of cherries sold for home use and not for resale;

(2) The shipment does not, in the aggregate, exceed 100 pounds, net weight, of cherries; and

(3) Each container is stamped or marked with the words "not for resale" in letters at least one-half inch in height.

(e) *Definitions.* When used herein, "Washington No. 1" and "diameter" shall have the same meaning as when used in the Washington State Standards for Grades of Sweet Cherries (Order 1550 effective April 29, 1978, WAC 16-414-050); "face packed" means that cherries in the top layer in any container are so placed that the stem ends are pointing downward toward the bottom of the container; "row count/row size" means the number of cherries of a uniform size necessary to pack row-faced across a 10½ inch inside width container or comparable number of cherries when packed loose in a container.

[47 FR 31538, July 21, 1982, as amended at 49 FR 27135, July 2, 1984]

PART 924—FRESH PRUNES GROWN IN DESIGNATED COUNTIES IN WASHINGTON AND IN UMATILLA COUNTY, OREGON

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924.319 Prune Regulation 19.

AUTHORITY: Secs. 1-19, 48 Stat. 31, as amended; 7 U.S.C. 601-674.

SOURCE: 25 FR 6350, July 7, 1960, unless otherwise noted. Redesignated at 26 FR 12751, Dec. 30, 1961.

Subpart—Order Regulating Handling

Definitions

§ 924.1 Secretary.

"Secretary" means the Secretary of Agriculture of the United States, or any officer or employee of the Department to whom authority has heretofore been delegated, or to whom authority may hereafter be delegated, to act in his stead.

§ 924.2 Act.

"Act" means Public Act No. 10, 73d Congress (May 12, 1933), as amended and as re-enacted and amended by the Agricultural Marketing Agreement Act of 1937, as amended (sec. 1-19, 48 Stat. 31, as amended; 7 U.S.C. 601-674).

§ 924.3 Person.

"Person" means an individual, partnership, corporation, association, or any other business unit.

§ 924.4 Production area.

"Production area" means the Counties of Okanogan, Chelan, Kittitas, Yakima, and Klickitat in the State of Washington and all counties in Washington lying east thereof and Umatilla County in the State of Oregon.

§ 924.5 Prunes

"Prunes" means all varieties of plums, classified botanically as Prunus domestica, grown in the production area, except those of the President variety.

§ 924.6 Varieties.

"Varieties" means and includes all classifications or subdivisions of prunes.

§ 924.7 Fiscal period.

"Fiscal period" is synonymous with fiscal year and means the 12-month period ending on March 31 of each year or such other period that may be approved by the Secretary pursuant to recommendations by the committee.

§ 924.8 Committee.

"Committee" means the Washington-Oregon Fresh Prune Marketing Committee established pursuant to § 924.20.

§ 924.9 Grade.

"Grade" means any one of the officially established grades of prunes as defined and set forth in the United States Standards for Fresh Plums and Prunes (§§ 51.1520-51.1537 of this title) or amendments thereto, or modifications thereof, or variations based thereon.

§ 924.10 Size.

"Size" means the shortest dimension, measured through the center of the prune, at right angles to a line running from the stem to the blossom end, or such other specifications as may be established by the committee with the approval of the Secretary.

§ 924.11 Grower.

"Grower" is synonymous with producer and means any person who produces prunes for market and who has a proprietary interest therein.

§ 924.12 Handler.

"Handler" is synonymous with shipper and means any person (except a common or contract carrier transporting prunes owned by another person) who handles prunes.

§ 924.13 Handle.

"Handle" or "ship" means to sell, consign, deliver, or transport prunes within the production area or between the production area and any point outside thereof: *Provided*, That the term "handle" shall not include the transportation within the production area of prunes from the orchard where grown to a packing facility located within such area for preparation for market.

§ 924.14 District.

"District" means the applicable one of the following described subdivisions of the production area, or such other subdivisions as may be prescribed pursuant to § 924.31(m):

(a) "District 1" shall include all of the production area except Walla Walla, Columbia, Garfield, and Asotin Counties in the State of Washington,

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and Umatilla County in the State of Oregon.

(b) "District 2" shall include the County of Umatilla in the State of Oregon and the Counties of Walla Walla, Columbia, Garfield, and Asotin in the State of Washington.

§ 924.15 Export.

"Export" means to ship prunes to any destination which is not within the 48 contiguous States, or the District of Columbia, of the United States.

§ 924.16 Pack.

"Pack" means the specific arrangement, size, weight, count, or grade of a quantity of prunes in a particular type and size of container, or any combination thereof.

§ 924.17 Container.

"Container" means a box, bag, crate, lug, basket, carton, package, or any other type of receptacle used in the packaging or handling of prunes.

Administrative Body

§ 924.20 Establishment and membership.

There is hereby established a Washington-Oregon Fresh Prune Marketing Committee consisting of 9 members, each of whom shall have an alternate who shall have the same qualifications as the member for whom he is an alternate. Six of the members and their respective alternates shall be growers or officers or employees of corporate growers. Three of the members and their respective alternates shall be handlers, or officers or employees of handlers. The 6 members of the committee who are growers or employees or officers of corporate growers are hereinafter referred to as "grower members" of the committee; and the 3 members of the committee who shall be handlers, or officers or employees of handlers, are hereinafter referred to as "handler members" of the committee. Four of the grower members and their respective alternates shall be producers of prunes in District 1, and 2 of the grower members and their respective alternates shall be producers of prunes in District 2. Two of the handler members and their respective alternates shall be handlers of prunes in District 1, and 1 of the handler members and his respective alternate shall be handlers of prunes in District 2.

§ 924.21 Term of office.

The term of office of each member and alternate member of the committee shall be for two years beginning April 1 and ending March 31: *Provided,* That the term of office of one-half the initial grower members and alternates from each district and one handler member and alternate from District 1 shall end March 31, 1961. Members and alternate members shall serve in such capacities for the portion of the term of office for which they are selected and have qualified and until their respective successors are selected and have qualified.

§ 924.22 Nominations.

(a) *Initial members.* Nominations for each of the initial members of the committee, together with nominations for the initial alternate members for each position, may be submitted to the Secretary by individual growers and handlers. Such nominations may be made by means of group meetings of the growers and handlers concerned in each district. Such nominations, if made, shall be filed with the Secretary no later than the effective date of this part. In the event nominations for initial members and alternate members of the committees are not filed pursuant to, and within the time specified in, this section, the Secretary may select such initial members and alternate members without regard to nominations, but selections shall be on the basis of the representation provided for in § 924.20.

(b) *Successor members.* (1) Except as may otherwise be prescribed pursuant to paragraph (b)(3) of this section, the committee shall hold or cause to be held, not later than March 1 of each year, a meeting or meetings of growers and handlers in each district for the purpose of designating nominees for successor members and alternate members of the committee. At each such meeting a chairman and a secretary shall be selected by the growers

and handlers eligible to participate therein. The chairman shall announce at the meeting the number of votes cast for each person nominated for member or alternate member and shall submit promptly to the committee a complete report concerning such meeting. The committee shall, in turn, promptly submit a copy of each such report to the Secretary.

(2) Only growers, including duly authorized officers or employees of corporate growers, who are present at such nomination meetings may participate in the nomination and election of nominees for grower members and their alternates. Each grower shall be entitled to cast only one vote for each nominee to be elected in the district in which he produces prunes. No grower shall participate in the election of nominees in more than one district in any one fiscal year. If a person is both a grower and a handler of prunes, such person may vote either as a grower or as a handler but not as both.

(3) Only handlers, including duly authorized officers or employees of handlers, who are present at such nomination meetings, may participate in the nomination and election of nominees for handler members and their alternates: *Provided*, That, in the event the committee determines that attendance at such nomination meetings is not representative of handlers generally, it may, with the approval of the Secretary, obtain nominations for handler members and their alternates by mail ballot. Each handler shall be entitled to cast only one vote for each nominee to be elected in the district in which he handles prunes, which vote shall be weighted by the volume of prunes handled by such handler during the then current fiscal year. No handler shall participate in the election of nominees in more than one district in any one fiscal year. If a person is both a grower and a handler of prunes, such person may vote either as a grower or as a handler but not as both.

§ 924.23 Selection.

From the nominations made pursuant to § 924.22, or from other qualified persons, the Secretary shall select the 6 grower members of the committee, the 3 handler members of the committee, and an alternate for each such member.

§ 924.24 Failure to nominate.

If nominations are not made within the time and in the manner prescribed in § 924.22, the Secretary may, without regard to nominations, select the members and alternate members of the committee on the basis of the representation provided for in § 924.20.

§ 924.25 Acceptance.

Any person selected by the Secretary as a member or as an alternate member of the committee shall qualify by filing a written acceptance with the Secretary promptly after being notified of such selection.

§ 924.26 Vacancies.

To fill any vacancy occasioned by the failure of any person selected as a member or as an alternate member of the committee to qualify, or in the event of the death, removal, resignation, or disqualification of any member or alternate member of the committee, a successor for the unexpired term of such member or alternate member of the committee shall be nominated and selected in the manner specified in §§ 924.22 and 924.23. If the names of nominees to fill any such vacancy are not made available to the Secretary within a reasonable time after such vacancy occurs, the Secretary may fill such vacancy without regard to nominations, which selection shall be made on the basis of representation provided for in § 924.20.

§ 924.27 Alternate members.

An alternate member of the committee, during the absence or at the request of the member for whom he is an alternate, shall act in the place and stead of such member and perform such other duties as assigned. In the event of the death, removal, resignation, or disqualification of a member, his alternate shall act for him until a successor for such member is selected and has qualified. In the event both a member of the committee and his alternate are unable to attend a committee meeting, the member or the committee may designate any other alter-

nate member from the same district and group (handler or grower) to serve in such member's place and stead.

§ 924.30 Powers.

The committee shall have the following powers:

(a) To administer the provisions of this part in accordance with its terms;

(b) To receive, investigate, and report to the Secretary complaints of violations of the provisions of this part;

(c) To make and adopt rules and regulations to effectuate the terms and provisions of this part; and

(d) To recommend to the Secretary amendments to this part.

§ 924.31 Duties.

The committee shall have, among others, the following duties:

(a) To select a chairman and such other officers as may be necessary, and to define the duties of such officers;

(b) To appoint such employees, agents, and representatives as it may deem necessary, and to determine the compensation and to define the duties of each;

(c) To submit to the Secretary as soon as practicable after the beginning of each fiscal period a budget for such fiscal period, including a report in explanation of the items appearing therein and a recommendation as to the rate of assessment for such period;

(d) To keep minutes, books, and records which will reflect all of the acts and transactions of the committee and which shall be subject to examination by the Secretary;

(e) To prepare periodic statements of the financial operations of the committee and to make copies of each such statement available to growers and handlers for examination at the office of the committee;

(f) To cause its books to be audited by a competent accountant at least once each fiscal year and at such time as the Secretary may request;

(g) To act as intermediary between the Secretary and any grower or handler;

(h) To investigate and assemble data on the growing, handling, and marketing conditions with respect to prunes;

(i) To submit to the Secretary such available information as he may request;

(j) To notify producers and handlers of all meetings of the committee to consider recommendations for regulations;

(k) To give the Secretary the same notice of meetings of the committee as is given to its members;

(l) To investigate compliance with the provisions of this part;

(m) With the approval of the Secretary, to redefine the districts into which the production area is divided, and to reapportion the representation of any district on the committee: *Provided*, That any such changes shall reflect, insofar as practicable, shifts in prune production within the districts and the production area.

§ 924.32 Procedure.

(a) Six members of the committee, including alternates acting for members, shall constitute a quorum; and any action of the committee shall require the concurring vote of at least 6 members: *Provided*, That any action relating to regulations authorized by §§ 924.52 and 924.53 which would be effective in District 2 shall require the concurring vote of at least 2 members from District 2.

(b) The committee may provide for simultaneous meetings of groups of its members assembled at two or more designated places: *Provided*, That such meetings shall be subject to the establishment of communication between all such groups and the availability of loud speaker receivers for each group so that each member may participate in the discussions and other actions the same as if the committee were assembled in one place. Any such meeting shall be considered as an assembled meeting.

(c) The committee may vote by telegraph, telephone, or other means of communication, and any votes so cast shall be confirmed promptly in writing: *Provided*, That if an assembled meeting is held, all votes shall be cast in person.

§ 924.33 Expenses and compensation.

The members of the committee, and alternates when acting as members, shall be reimbursed for expenses necessarily incurred by them in the performance of their duties under this part and may also receive compensation, as determined by the committee, which shall not exceed $10 per day or portion thereof spent in performing such duties: *Provided,* That at its discretion the committee may request the attendance of one or more alternates at any or all meetings, notwithstanding the expected or actual presence of the respective members, and may pay expenses and compensation, as aforesaid.

§ 924.34 Annual report.

The committee shall, prior to the last day of each fiscal period, prepare and mail an annual report to the Secretary and make a copy available to each handler and grower who requests a copy of the report. This annual report shall contain at least: (a) A complete review of the regulatory operations during the fiscal period; (b) an appraisal of the effect of such regulatory operations upon the prune industry; and (c) any recommendations for changes in the program.

EXPENSES AND ASSESSMENTS

§ 924.40 Expenses.

The committee is authorized to incur such expenses as the Secretary finds are reasonable and likely to be incurred by the committee for its maintenance and functioning and to enable it to exercise its powers and perform its duties in accordance with the provisions of this part during each fiscal period. The funds to cover such expenses shall be acquired by the levying of assessments as prescribed in § 924.41.

§ 924.41 Assessments.

(a) Each person who first handles prunes shall, with respect to the prunes so handled by him, pay to the committee upon demand such person's pro rata share of the expenses which the Secretary finds will be incurred by the committee during each fiscal period. Each such person's share of such expenses shall be equal to the ratio between the total quantity of prunes handled by him as the first handler thereof during the applicable fiscal period and the total quantity of prunes so handled by all persons during the same fiscal period. The payment of assessments for the maintenance and functioning of the committee may be required under this part throughout the period it is in effect irrespective of whether particular provisions thereof are suspended or become inoperative.

(b) The Secretary shall fix the rate of assessment to be paid by each such person. At any time during or after the fiscal period, the Secretary may increase the rate of assessment in order to secure sufficient funds to cover any later finding by the Secretary relative to the expenses which may be incurred. Such increase shall be applied to all prunes handled during the applicable fiscal period. In order to provide funds for the administration of the provisions of this part during the first part of a fiscal period before sufficient operating income is available from assessments on the current year's shipments, the committee may accept the payment of assessments in advance, and may also borrow money for such purpose.

§ 924.42 Accounting.

(a) If, at the end of a fiscal period, the assessments collected are in excess of expenses incurred, such excess shall be accounted for as follows:

(1) Except as provided in paragraphs (a)(2) and (3) of this section, each person entitled to a proportionate refund of any excess assessment shall be credited with such refund against the operation of the following fiscal period unless such person demands repayment thereof, in which event it shall be paid to him: *Provided,* That any sum paid by a person in excess of his pro rata share of the expenses during any fiscal period may be applied by the committee at the end of such fiscal period to any outstanding obligations due the committee from such person.

(2) The committee, with the approval of the Secretary, may establish and

maintain during one or more fiscal years an operating monetary reserve in an amount not to exceed approximately one fiscal year's operational expenses. Funds in such reserve shall be available for use by the committee for all expenses authorized pursuant to § 924.40.

(3) Upon termination of this part, any funds not required to defray the necessary expenses of liquidation shall be disposed of in such manner as the Secretary may determine to be appropriate: *Provided,* That to the extent practical, such funds shall be returned pro rata to the persons from whom such funds were collected.

(b) All funds received by the committee pursuant to the provisions of this part shall be used solely for the purposes specified in this part and shall be accounted for in the manner provided in this part. The Secretary may at any time require the committee and its members to account for all receipts and disbursements.

(c) Upon the removal or expiration of the term of office of any member of the committee, such member shall account for all receipts and disbursements and deliver all property and funds in his possession to his successor in office, and shall execute such assignments and other instruments as may be necessary or appropriate to vest in such successor full title to all of the property, funds, and claims vested in such member pursuant to this part.

RESEARCH

§ 924.45 Research and development.

The committee, with the approval of the Secretary, may establish or provide for the establishment of production research, and marketing research and development projects designed to assist, improve, or promote the marketing, distribution, and consumption or efficient production of fresh prunes. The expense of such projects shall be paid from funds collected pursuant to § 924.41.

[39 FR 33306, Sept. 17, 1974]

REGULATIONS

§ 924.50 Marketing policy.

(a) Each season prior to making any recommendations pursuant to § 924.51, the committee shall submit to the Secretary a report setting forth its marketing policy for the ensuring season. Such marketing policy report shall contain information relative to:

(1) The estimated total production of prunes within the production area;

(2) The expected general quality and size of prunes in the production area and in other areas;

(3) The expected demand conditions for prunes in different market outlets;

(4) The expected shipments of prunes produced in the production area and in areas outside the production area;

(5) Supplies of competing commodities;

(6) Trend and level of consumer income;

(7) Other factors having a bearing on the marketing of prunes; and

(8) The type of regulations expected to be recommended during the season.

(b) In the event it becomes advisable, because of changes in the supply and demand situation for prunes, to modify substantially such marketing policy, the committee shall submit to the Secretary a revised marketing policy report setting forth the information prescribed in this section. The committee shall publicly announce the contents of each marketing policy report, including each revised marketing policy report, and copies thereof shall be maintained in the office of the committee where they shall be available for examination by growers and handlers.

§ 924.51 Recommendations for regulation.

(a) Whenever the committee deems it advisable to regulate the handling of any variety or varieties of prunes in the manner provided in § 924.52, it shall so recommend to the Secretary.

(b) In arriving at its recommendations for regulation pursuant to paragraph (a) of this section, the committee shall give consideration to current information with respect to the factors affecting the supply and demand

for prunes during the period or periods when it is proposed that such regulation should be made effective. With each such recommendation for regulation, the committee shall submit to the Secretary the data and information on which such recommendation is predicated and such other available information as the Secretary may request.

§ 924.52 Issuance of regulations.

(a) The Secretary shall regulate, in the manner specified in this section, the handling of prunes whenever he finds, from the recommendations and information submitted by the committee, or from other available information, that such regulations will tend to effectuate the declared policy of the act. Such regulations may:

(1) Limit, during any period or periods, the shipment of any particular grade, size, quality, maturity, or pack or any combination thereof, of any variety or varieties of prunes grown in any district or districts: *Provided*, That whenever any regulation under this paragraph prescribes a specific maturity requirement applicable to the handling of any variety of prunes, such maturity requirement shall apply uniformly to all prunes of such variety grown in both districts;

(2) Limit the shipment of prunes by establishing, in terms of grades, sizes, or both, minimum standards of quality and maturity during any period when season average prices are expected to exceed the parity level;

(3) Fix the size, capacity, weight, dimensions, markings, or pack of the container, or containers, which may be used in the packaging or handling of prunes;

(4) Prescribe requirements, as provided in this paragraph, applicable to exports of any variety of prunes which are different from those applicable to the handling of the same variety to other destinations.

(b) The committee shall be informed immediately of any such regulation issued by the Secretary, and the committee shall promptly give notice thereof to growers and handlers.

§ 924.53 Modification, suspension, or termination of regulations.

(a) In the event the committee at any time finds that, by reason of changed conditions, any regulations issued pursuant to § 924.52 should be modified, suspended, or terminated, it shall so recommend to the Secretary.

(b) Whenever the Secretary finds, from the recommendations and information submitted by the committee or from other available information, that a regulation should be modified, suspended, or terminated with respect to any or all shipments of prunes in order to effectuate the declared policy of the act, he shall modify, suspend, or terminate such regulation. On the same basis and in like manner the Secretary may terminate any such modification or suspension. If the Secretary finds that a regulation obstructs or does not tend to effectuate the declared policy of the act, he shall suspend or terminate such regulation. On the same basis and in like manner the Secretary may terminate any such suspension.

§ 924.54 Special purpose shipments.

(a) Except as otherwise provided in this section, any person may, without regard to the provisions of §§ 924.41, 924.52, 924.53, and 924.55, and the regulations issued thereunder, handle prunes (1) for consumption by charitable institutions; (2) for distribution by relief agencies; or (3) for commercial processing into products.

(b) Upon the basis of recommendations and information submitted by the committee, or from other available information, the Secretary may relieve from any or all requirements, under or established pursuant to § 924.41, § 924.52, § 924.53, or § 924.55, the handling of prunes in such minimum quantities, or types of shipments, or for such specified purposes (including shipments to facilitate the conduct of marketing research and development projects established pursuant to § 924.45) as the committee, with approval of the Secretary, may prescribe.

(c) The committee shall, with the approval of the Secretary, prescribe such rules, regulations, and safeguards as it may deem necessary to prevent

prunes handled under the provisions of this section from entering the channels of trade for other than the specific purposes authorized by this section. Such rules, regulations, and safeguards may include the requirements that handlers shall file applications and receive approval from the committee for authorization to handle prunes pursuant to this section, and that such applications be accompanied by a certification by the intended purchaser or receiver that the prunes will not be used for any purpose not authorized by this section.

§ 924.55 Inspection and certification.

Whenever the handling of any variety of prunes is regulated pursuant to § 924.52 or § 924.53, each handler who handles prunes shall, prior thereto, cause such prunes to be inspected by the Federal or Federal-State Inspection Service, and certified by it as meeting the applicable requirements of such regulation: *Provided,* That inspection and certification shall be required for prunes which previously have been so inspected and certified only if such prunes have been regraded, resorted, repackaged, or in any other way further prepared for market. Promptly after inspection and certification, each such handler shall submit, or cause to be submitted, to the committee a copy of the certificate of inspection issued with respect to such prunes. The committee may, with the approval of the Secretary, prescribe rules and regulations modifying the inspection requirements of this section as to time and place such inspection shall be performed whenever it is determined it would not be practical to perform the required inspection at a particular location: *Provided,* That all such shipments shall comply with all regulations in effect.

Reports

§ 924.60 Reports.

(a) Upon request of the committee made with the approval of the Secretary, each handler shall furnish to the committee, in such manner and at such time as it may prescribe, such reports and other information as may be necessary for the committee to perform its duties under this part. Such reports may include, but are not necessarily limited to, the following: (1) The quantities of each variety of prunes received by a handler; (2) the quantities disposed of by him, segregated as to the respective quantities subject to regulation and not subject to regulation; (3) the date of each such disposition and the identification of the carrier transporting such prunes; and (4) the destination of each shipment of such prunes.

(b) All such reports shall be held under appropriate protective classification and custody by the committee, or duly appointed employees thereof, so that the information contained therein which may adversely affect the competitive position of any handler in relation to other handlers will not be disclosed. Compilations of general reports from data submitted by handlers are authorized, subject to the prohibition of disclosure of individual handler's identities or operations.

(c) Each handler shall maintain for at least two succeeding years such records of the prunes received, and of prunes disposed of, by such handler as may be necessary to verify reports pursuant to this section.

Miscellaneous Provisions

§ 924.61 Compliance.

Except as provided in this part, no person shall handle prunes, the shipment of which has been prohibited by the Secretary in accordance with the provisions of this part; and no person shall handle prunes except in conformity with the provisions and the regulations issued under this part.

§ 924.62 Right of the Secretary.

The members of the committee (including successors and alternates), and any agents, employees, or representatives thereof, shall be subject to removal or suspension by the Secretary at any time. Each and every regulation, decision, determination, or other act of the committee shall be subject to the continuing right of the Secretary to disapprove of the same at any time. Upon such disapproval, the disapproved action of the committee shall be deemed null and void, except

as to acts done in reliance thereon or in accordance therewith prior to such disapproval by the Secretary.

§ 924.63 Effective time.

The provisions of this part and any amendments thereto shall become effective at such time as the Secretary may declare above his signature, and shall continue in force until terminated in one of the ways specified in § 924.64.

§ 924.64 Termination.

(a) The Secretary may at any time terminate the provisions of this part by giving at least one day's notice by means of a press release or in any other manner in which he may determine.

(b) The Secretary shall terminate or suspend the operation of any and all of the provisions of this part whenever he finds that such provisions do not tend to effectuate the declared policy of the act.

(c) The Secretary shall terminate the provisions of this part at the end of any fiscal period whenever he finds that continuance is not favored by the majority of producers who, during a representative period determined by the Secretary, were engaged in the production area in the production of prunes for market in fresh form: *Provided,* That such majority has produced for market during such period more than 50 percent of the volume of prunes produced for fresh market in the production area; but such termination shall be effective only if announced on or before March 31 of the then current fiscal period.

(d) The provisions of this part shall, in any event, terminate whenever the provisions of the act authorizing them cease to be in effect.

§ 924.65 Proceedings after termination.

(a) Upon the termination of the provisions of this part, the committee shall, for the purpose of liquidating the affairs of the committee, continue as trustees of all the funds and property then in its possession, or under its control, including claims for any funds unpaid or property not delivered at the time of such termination.

(b) The said trustees shall (1) continue in such capacity until discharged by the Secretary; (2) from time to time account for all receipts and disbursements and deliver all property on hand, together with all books and records of the committee and of the trustees, to such persons as the Secretary may direct; and (3) upon the request of the Secretary, execute such assignments or other instruments necessary or appropriate to vest in such person, full title and right to all of the funds, property, and claims vested in the committee or the trustees pursuant hereto.

(c) Any person to whom funds, property, or claims have been transferred or delivered, pursuant to this section, shall be subject to the same obligation imposed upon the committee and upon the trustees.

§ 924.66 Effect of termination or amendment.

Unless otherwise expressly provided by the Secretary, the termination of this part or of any regulation issued pursuant to this part, or the issuance of any amendment to either thereof, shall not (a) affect or waive any right, duty, obligation, or liability which shall have arisen or which may thereafter arise in connection with any provision of this part or any regulation issued under this part, or (b) release or extinguish any violation of this part or of any regulation issued under this part, or (c) affect or impair any rights or remedies of the Secretary or of any other person with respect to any such violation.

§ 924.67 Duration of immunities.

The benefits, privileges, and immunities conferred upon any person by virtue of this part shall cease upon the termination of this part, except with respect to acts done under and during the existence of this part.

§ 924.68 Agents.

The Secretary may, by designation in writing, name any officer or employee of the United States, or name any agency or division in the United States Department of Agriculture, to act as his agent or representative in

connection with any of the provisions of this part.

§ 924.69 Derogation.

Nothing contained in the provisions of this part is, or shall be construed to be, in derogation or in modification of the rights of the Secretary or of the United States (a) to exercise any powers granted by the act or otherwise, or (b) in accordance with such powers, to act in the premises whenever such action is deemed advisable.

§ 924.70 Personal liability.

No member or alternate member of the committee and no employee or agent of the committee shall be held personally responsible, either individually or jointly with others, in any way whatsoever, to any person for errors in judgment, mistakes, or other acts, either of commission or omission, as such member, alternate, employee, or agent, except for acts of dishonesty, willful misconduct, or gross negligence.

§ 924.71 Separability.

If any provision of this part is declared invalid or the applicability thereof to any person, circumstance, or thing is held invalid, the validity of the remainder of this part or the applicability thereof to any other person, circumstance, or thing shall not be affected thereby.

Subpart—Rules and Regulations

§ 924.101 Changes in district representation.

Beginning with the 1970-71 fiscal period, the representation or membership on the Washington-Oregon Fresh Prune Marketing Committee is reapportioned as follows:

(a) Three (3) grower members and their respective alternates shall be producers of prunes in District 1;

(b) Three (3) grower members and their respective alternates shall be producers of prunes in District 2;

(c) Two (2) handler members and their respective alternates shall be producers of prunes in District 1; and

(d) One (1) handler member and his alternate shall be handlers of prunes in District 2.

[35 FR 3798, Feb. 27, 1970]

§ 924.110 Waiver of inspection and certification.

(a) *Application.* Any handler (including a grower-handler packing and handling prunes of such handler's own production), whose packing facilities are located in an area where either a Washington State Plant Industry Division Inspection Office or Oregon State Plant Industry Inspection Office or Federal-State Inspector is not readily available to perform the required inspection may, prior to shipment, apply to the Committee for a permit authorizing a waiver of inspection. Applications shall be made on forms furnished by the Committee and shall contain such information as the Committee may require including: Name and address of applicant, location of packing facility, distance of packing facility from the nearest inspection office, period (approximate beginning and ending dates) during which the applicant expects to ship to fresh market during the period, manner in which the majority of applicant's fruit will be marketed (i.e., transported by applicant to market, sold at orchard to truckers, etc.), areas or markets to which the applicant expects to ship the majority of the prunes. The application shall also contain an agreement by applicant

(1) not to ship or handle any prunes unless such prunes meet the grade, size, maturity, container, and all other requirements of the marketing agreement and order in effect at time of handling;

(2) to report periodically to the Committee on reporting forms furnished by the Committee, the following information on each shipment: quantity, variety, grade, minimum size, container, date of shipment, destination, name and address of buyer or receiver, and such other information as the Committee may specify;

(3) to pay applicable assessments on each shipment;

(4) to have or cause to have each shipment of prunes inspected when

such shipment is transported to a market or through a location enroute to market where an inspector is available; and

(5) to comply with such other safeguards as the Committee may prescribe.

(b) *Issuance of permit.* Whenever the Committee finds and determines from the information contained in the application or from other proof satisfactory to the Committee that the applicant is entitled to a waiver from the inspection requirements of the marketing agreement and order at time of shipment, the Committee shall issue a permit authorizing the applicant to ship prunes in accordance with these administrative regulations and the terms and conditions of such permit.

[44 FR 49416, Aug. 23, 1979]

§ 924.142 Reserve fund.

(a) The establishment of a reserve fund of an amount which shall not exceed approximately one fiscal year's operational expenses is appropriate and necessary to the maintenance and functioning of the Washington-Oregon Fresh Prune Marketing Committee. The committee is hereby authorized to carry forward in the aforesaid reserve $4,863.46 which are excess assessment funds from the fiscal period ended March 31, 1961. Such reserve shall be used in accordance with the provisions of § 924.42 of said marketing agreement and order (§§ 924.1 to 924.71).

(b) Terms used in this section shall have the same meaning as given to the respective term in said marketing agreement and order.

[26 FR 8664, Sept. 16, 1961. Redesignated at 26 FR 12751, Dec. 30, 1961 and 44 FR 73011, Dec. 17, 1979]

NOTE: After January 1, 1979, "Budget of Expenses and Rate of Assessment" regulations (e.g. sections .200 through .299) and "Handling" regulations (e.g. sections .320 through .399) which are in effect for a year or less, will not be carried in the Code of Federal Regulations. For FEDERAL REGISTER citations affecting these regulations, see the "List of CFR Sections Affected" in this volume.

Subpart—Grade and Size Requirements

§ 924.319 Prune Regulation 19.

(a) On and after August 1, 1981, no handler shall handle any lot of prunes, except prunes of the Brooks variety, unless:

(1) Such prunes grade at least U.S. No. 1, except that at least two-thirds of the surface of the prune is required to be purplish in color, and such prunes measure not less than 1¼ inches in diameter as measured by a rigid ring: *Provided,* That the following tolerances, by count, of the prunes in any lot shall apply in lieu of the tolerance for defects provided in the United States Standards for Grades of Fresh Plums and Prunes: A total of not more than 15 percent for defects, including therein not more than the following percentage for the defect listed:

(i) 10 percent for prunes which fail to meet the color requirement;

(ii) 10 percent for prunes which fail to meet the minimum diameter requirement;

(iii) 10 percent for prunes which fail to meet the remaining requirements of the grade: *Provided,* That not more than one-half of this amount, or 5 percent, shall be allowed for defects causing serious damage, including in the latter amount not more than 1 percent for decay; or

(2) Such prunes are handled in accordance with paragraph (b) of this section.

(b) Notwithstanding any other provision of this regulation, any individual shipment which, in the aggregate, does not exceed 500 pounds net weight, of prunes of the Stanley or Merton varieties of prunes, or 350 pounds net weight, of prunes of any variety other than Stanley or Merton varieties of prunes, which meets each of the following requirements may be handled without regard to the provisions of paragraph (a) of this section, and of §§ 924.41 and 924.55:

(1) The shipment consists of prunes sold for home use and not for resale, and

(2) Each container is stamped or marked with the handler's name and

address and with the words "not for resale" in letters at least one-half inch in height.

(c) The term "U.S. No. 1" shall have the same meaning as when used in the United States Standards for Grades of Fresh Plums and Prunes (7 CFR 2851.1520-2851.1538); the term "purplish color" shall have the same meaning as when used in the Washington State Department of Agriculture Standards for Italian Prunes (April 29, 1978), and in the Oregon State Department of Agriculture Standards for Italian Prunes (October 5, 1977); the term "diameter" means the greatest dimension measured at right angles to a line from the stem to blossom end of the fruit; and, except as otherwise specified, all other terms shall have the same meaning as when used in the marketing agreement and order.

[46 FR 38668, July 29, 1981, as amended at 49 FR 27732, July 6, 1984]

PART 925—GRAPES GROWN IN A DESIGNATED AREA OF SOUTHEASTERN CALIFORNIA

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AUTHORITY: 7 U.S.C. 601-674, unless otherwise noted.

SOURCE: 45 FR 40566, June 16, 1980, unless otherwise noted.

DEFINITIONS

§ 925.1 Secretary.

"Secretary" means the Secretary of Agriculture of the United States, or any officer or employee of the Department to whom authority has heretofore been delegated, or to whom authority may hereafter be delegated.

§ 925.2 Act.

"Act" means Public Act No. 10, 73d Congress (May 12, 1933), as amended and as reenacted and amended by the Agricultural Marketing Agreement Act of 1937, as amended (48 Stat. 31, as amended; 7 U.S.C. 601-674).

§ 925.3 Person.

"Person" means an individual, partnership, corporation, association, or any other business unit.

§ 925.4 Grapes.

"Grapes" means any variety of vinifera species table grapes grown in the production area.

§ 925.5 Production area.

"Production area" means Imperial County, California, and that part of Riverside County and San Diego County, California, situated east of a line drawn due north and south through the Post Office in White Water, California.

§ 925.6 Varieties.

"Varieties" means and includes all classifications or subdivisions of Vitis vinifera table grapes.

§ 925.7 Producer.

"Producer" is synonymous with "grower" and means any person who produces grapes for the fresh market and who has a proprietary interest therein.

§ 925.8 Handler.

"Handler" is synonymous with "shipper" and means any person (except a common or contract carrier of grapes owned by another person) who handles grapes or causes grapes to be handled.

§ 925.10 Handle.

"Handle" is synonymous with "ship" and means to pack, sell, deliver (including delivery to a storage facility), transport, or in any way to place grapes in the current of commerce within the production area or between the production area and any point outside thereof: *Provided,* That such term shall not include the sale of grapes on the vine and except when regulations are effective pursuant to § 925.52(a)(5) shall not include the transportation or delivery of grapes to a packinghouse within the production area for preparation for market.

§ 925.11 Pack.

"Pack" means the specific arrangement, weight, grade or size, including the uniformity thereof, of the grapes within a container: *Provided,* That when used in or with respect to § 925.52(a)(5) such term shall mean to place grapes into containers for shipment to market as fresh grapes.

§ 925.12 Fiscal period.

"Fiscal period" is synonymous with "fiscal year" and means the 12 month period beginning on December 1 of one year and ending the last day of November of the following year or such other period as the committee, with the approval of the Secretary, may prescribe.

§ 925.13 Container.

"Container" means any lug, box, bag, crate, carton, or any other receptacle used in packing grapes for shipment as fresh grapes, and includes the dimensions, capacity, weight, marking, and any pads, liners, lids, and any or all appurtenances thereto or parts thereof. The term applies, in the case of grapes packed in consumer packages, to the master receptacle and to any and all packages therein.

§ 925.14 Committee.

"Committee" means the California Desert Grape Administrative Committee established under § 925.20.

ADMINISTRATIVE BODY

§ 925.20 Establishment and membership.

(a) There is hereby established a California Desert Grape Administrative Committee consisting of 12 members, each of whom shall have an alternate who shall have the same qualifications as the member. Five of the members and their alternates shall be producers or officers or employees of producers (producer members). Five of the members and their alternates shall be handlers or officers or employees of handlers (handler members). One member and alternate shall be either a producer or handler or officer or employee thereof. One member and alternate shall represent the public.

(b) Not more than two members and not more than two alternate members shall be affiliated with the same handler entity.

(c) The committee may, with the approval of the Secretary, provide such other allocation of producer or handler membership, or both, as may be necessary to assure equitable representation.

§ 925.21 Term of office.

The term of office of the members and alternates shall be one fiscal period. Each member and alternate shall serve in such capacities for the portion of the term of office for which they are selected and have qualified and until their respective successors are selected and have qualified.

§ 925.22 Nomination.

(a) *Initial members.* Nominations for each of the initial members, together with nominations for the initial alternate members for each position, may be submitted to the Secretary by the Committee responsible for promulgation of this part. Such nominations may be made by means of a meeting of the growers and a meeting of the handlers. Such nominations, if made, shall be filed with the Secretary no later than the effective date of this part. In the event nominations for initial members and alternate members of the committee are not filed pursuant to, and within the time specified in, this section, the Secretary may select such initial members and alternate members without regard to nominations, but selections shall be on the basis of the representation provided in § 925.20.

(b) *Successor members.* The Secretary shall cause to be held, not later than November 15, of each year, meetings of producers and handlers for the purpose of making nominations for members and alternate members of the committee.

(c) Only producers, including duly authorized officers or employees of producers, who are present at such nomination meetings, may participate in the nomination and election of nominees for producer members and their alternates. Each producer entity shall be entitled to cast only one vote. If a person is both a producer and a handler of grapes, such person may participate in both producer and handler nominations.

(d) Only handlers, including duly authorized officers or employees of handlers, who are present at such nomination meetings, may participate in the nomination and election of nominees for handler members and their alternates. Each handler entity shall be entitled to cast only one vote.

(e) One member and alternate member shall be nominated by a vote of both producers and handlers and may be of either group.

(f) The public member and alternate member shall be nominated by the committee. The committee shall prescribe, with the approval of the Secretary, procedures for the nomination of the public member and qualification requirements for such member.

§ 925.23 Selection.

The Secretary shall select members and alternate members of the committee from persons nominated pursuant to § 925.22 or from other qualified persons.

§ 925.24 Failure to nominate.

If nominations are not made within the time and in the manner specified in § 925.22 the Secretary may select the members and alternate members of the committee without regard to nominations on the basis of the representation provided for in § 925.20.

§ 925.25 Acceptance.

Any person selected by the Secretary as a member or as an alternate member of the committee shall qualify by filing a written acceptance with the Secretary promptly after being notified of such selection.

§ 925.26 Vacancies.

To fill any vacancy occasioned by the failure of any person selected as a member or as an alternate member of the committee to qualify, or in the event of the death, removal, resignation, or disqualification of any member or alternate member of the committee, a successor for the unexpired term of such member or alter-

nate member of the committee shall be nominated and selected in the manner specified in §§ 925.22 and 925.23. If the names of the nominees to fill any such vacancy are not made available to the Secretary within a reasonable time after such vacancy occurs, the Secretary may fill such vacancy without regard to nominations, which selection shall be made on the basis of the representation provided for in § 925.20.

§ 925.27 Alternate members.

An alternate member shall act in the place of the member during such member's absence or at such member's request, and may be assigned other program duties by the chairman or the committee. In the event of the death, removal, resignation, or disqualification of a member the alternate shall act for the member until a successor for such member is selected and has qualified. In the event that both a member and that member's alternate are unable to attend a committee meeting, the member or committee members present may designate any other alternate to serve in such member's place at the meeting if such action is necessary to secure a quorum: *Provided,* That not more than two members or alternates acting for members who are affiliated with the same handler entity shall serve as members at the same meeting.

§ 925.28 Powers.

The committee shall have the following powers:

(a) To administer the provisions of this part in accordance with its terms;

(b) To receive, investigate, and report to the Secretary complaints of violations of the provisions of this part;

(c) To make and adopt rules and regulations to effectuate the terms and provisions of this part; and

(d) To recommend to the Secretary amendments to this part.

§ 925.29 Duties.

The committees shall have, among others, the following duties:

(a) To select a chairman and such other officers as may be necessary, and to define the duties of such officers;

(b) To appoint such employees, agents, and representatives as it may deem necessary, and to determine compensation and to define the duties of each;

(c) To submit to the Secretary as soon as practicable after the beginning of each fiscal period a budget for such period, including a report in explanation of the items appearing therein and a recommendation as to the rate of assessment for such period;

(d) To keep minutes, books, and records, which will reflect all of the acts and transactions of the committee and which shall be subject to examination by the Secretary;

(e) To prepare periodic statements of the financial operations of the committee and to make copies of each such statement available to growers and handlers for examination at the office of the committee;

(f) To cause its books to be audited by a competent public accountant at least once each fiscal period and at such times as the Secretary may request;

(g) To act as intermediary between the Secretary and any grower or handler;

(h) To investigate and assemble data on the growing, handling, and marketing conditions with respect to grapes;

(i) To submit to the Secretary the same notice of meetings of the committee as is given to its members;

(j) To submit to the Secretary such available information as may be requested; and

(k) To investigate compliance with the provisions of this part.

§ 925.30 Procedure.

(a) Eight members of the committee shall constitute a quorum and any action of the committee shall require at least eight concurring votes;

(b) The committee may vote by telephone, telegraph, or other means of communications; and any votes so cast shall be confirmed promptly in writing: *Provided,* That if an assembled meeting is held, all votes shall be cast in person.

§ 925.31 Compensation and expenses.

The members of the committee, and alternates when acting as members, shall serve without compensation but may be reimbursed for expenses necessarily incurred by them in the performance of their duties under this part: *Provided,* That the committee at its discretion may request the attendance of one or more alternates at any or all meetings notwithstanding the expected or actual presence of the respective members and may pay expenses as aforesaid.

§ 925.32 Annual report.

The committee should, as soon as practicable, after the close of each fiscal period, prepare and mail an annual report to the Secretary and make a copy available to each grower and handler who requests a copy of the report.

EXPENSES AND ASSESSMENTS

§ 925.40 Expenses.

The committee is authorized to incur such expenses as the Secretary finds are reasonable and likely to be incurred by the committee for its maintenance and functioning and to enable it to exercise its powers and perform its duties in accordance with the provisions of this part. The funds to cover such expenses shall be acquired in the manner prescribed in § 925.41.

§ 925.41 Assessments.

(a) Each person who first handles grapes shall pay to the committee, upon demand, such handler's pro rata share of the expenses which the Secretary finds are reasonable and likely to be incurred by the committee during a fiscal period. The payment of assessments for the maintenance and functioning of the committee may be required under this part throughout the period it is in effect irrespective of whether particular provisions thereof are suspended or become inoperative.

(b) The Secretary shall fix the rate of assessment to be paid by each such person during a fiscal period in an amount designed to secure sufficient funds to cover the expenses which may be incurred during such period and to accumulate and maintain a reserve fund equal to approximately one fiscal period's expenses. At any time during or after a fiscal period, the Secretary may increase the rate of assessment in order to secure sufficient funds to cover any later findings by the Secretary relative to the expenses which may be incurred. Such increase shall be applied to all grapes handled during the applicable fiscal period. In order to provide funds for the administration of the provisions of this part during the first part of a fiscal period before sufficient operating income is available from assessments in the current period's shipments, the committee may accept the payment of assessments in advance, and may also borrow money for such purpose.

(c) Any assessment not paid by a handler within a period of time prescribed by the committee may be subject to an interest or late payment charge, or both. The period of time, rate of interest, and late payment charge shall be recommended by the committee and approved by the Secretary. Subsequent to such approval, all assessments not paid within the prescribed time shall be subject to the interest or late payment charge, or both.

§ 925.42 Accounting.

(a) If, at the end of a fiscal period, the assessments collected are in excess of expenses incurred, such excess shall be accounted for in accordance with one of the following:

(1) If such excess is not retained in a reserve, as provided in paragraph (d)(2) of this section, it shall be refunded proportionately to the persons from whom it was collected: *Provided,* That any sum paid by a person in excess of that person's pro rata share of the expenses during any fiscal period may be applied by the committee at the end of such fiscal period to any outstanding obligations due the committee from such person.

(2) The committee, with the approval of the Secretary, may carry over such excess into subsequent fiscal periods as a reserve: *Provided,* That funds in the reserve shall not exceed approximately one fiscal period's expenses. Such reserve funds may be

used: (i) To defray expenses, during any fiscal period, prior to the time the assessment income is sufficient to cover such expenses; (ii) to cover deficits incurred during any fiscal period when assessment income is less than expenses; (iii) to defray expenses incurred during any period when any or all provisions of this part are suspended or are inoperative; or (iv) to cover necessary expenses of liquidation in the event of termination of this part. Upon such termination, any funds not required to defray the necessary expenses of liquidation shall be disposed of in such manner as the Secretary may determine to be appropriate: *Provided,* That to the extent practicable such funds shall be returned pro rata to the persons from whom such funds were collected.

(b) All funds received by the committee under this part shall be used solely for the purpose specified in this part and shall be accounted for in the manner provided in this part. The Secretary may at any time require the committee and its members to account for all receipts and disbursements.

(c) Upon the removal or expiration of the term of office of any member of the committee, such member shall account for all receipts and disbursements and deliver all property and funds in such member's possession to the committee, and shall execute such assignments and other instruments as may be necessary or appropriate to vest in the committee full title to all of the property, funds, and claims vested in such member pursuant to this part.

Research and Market Development

§ 925.45 Production research and market research and development.

The committee, with the approval of the Secretary, may establish or provide for the establishment of production research, marketing research and development projects designed to assist, improve or promote the marketing, distribution and consumption or the efficient production of grapes. The expense of such projects shall be paid from funds collected pursuant to this part.

Regulations

§ 925.50 Marketing policy.

Each season prior to making any recommendation pursuant to § 925.51 the committee shall submit to the Secretary a report setting forth its marketing policy for the ensuing marketing season. Such marketing policy report shall contain information relative to:

(a) The estimated total shipments of grapes produced within the production area;

(b) The expected general quality of grapes in the production area;

(c) The expected demand conditions for grapes;

(d) The probable prices for grapes;

(e) Supplies of competing commodities, including foreign produced grapes;

(f) Trend and level of consumer income;

(g) Other factors having a bearing on the marketing of grapes; and

(h) The type of regulations expected to be recommended during the marketing season.

§ 925.51 Recommendation for regulation.

Upon complying with the requirements of § 925.50 the committee may recommend regulations to the Secretary whenever the committee deems that such regulations as are provided in § 925.52 will tend to effectuate the declared policy of the act.

§ 925.52 Issuance of regulations.

(a) The Secretary shall regulate, in the manner specified in this section, the handling of grapes upon finding from the recommendations and information submitted by the committee, or from other available information, that such regulation would tend to effectuate the declared policy of the act. Such regulation may: (1) Limit the handling of any grade, size, quality, maturity, or pack, or any combination thereof, of any or all varieties of grapes during any period or periods; (2) limit the handling of any grade, size, quality, maturity, or pack of grapes differently for different varieties, or any combination of the foregoing during any period or periods; (3) limit the handling of grapes by estab-

lishing in terms of grades, sizes, or both, minimum standards of quality and maturity during any period when season average prices are expected to exceed the parity level; (4) fix the size, capacity, weight, dimensions, markings, materials, or pack of the container which may be used in handling of grapes; (5) establish holidays by prohibiting the packing of all varieties of grapes during a specified period or periods.

(b) No handler shall handle grapes that were packed during any period when such packing was prohibited by any regulation issued under paragraph (a)(5) of this section unless such grapes are handled under § 925.54.

§ 925.53 Modification, suspension, or termination of regulations.

(a) In the event the committee at any time finds that, by reason of changed conditions, any regulations issued pursuant to § 925.52 should be modified, suspended, or terminated, it shall so recommend to the Secretary.

(b) Whenever the Secretary finds from the recommendations and information submitted by the committee or from other available information that a regulation should be modified, suspended, or terminated with respect to any or all shipments of grapes in order to effectuate the declared policy of the act, the Secretary shall modify, suspend, or terminate such regulation. If the Secretary finds that a regulation obstructs or does not tend to effectuate the declared policy of the act, the Secretary shall suspend or terminate such regulation. On the same basis and in like manner the Secretary may terminate any such modification or suspension.

§ 925.54 Special purpose shipments.

(a) Regulations in effect pursuant to § 925.41, § 925.52, or § 925.55 may be modified, suspended, or terminated to facilitate handling of grapes for purposes which may be recommended by the committee and approved by the Secretary.

(b) The committee shall, with the approval of the Secretary, prescribe such rules, regulations, and safeguards as it may deem necessary to prevent grapes handled under the provisions of this section from entering the channels of trade for other than the specific purposes authorized by this section.

Inspection and Certification

§ 925.55 Inspection and certification.

(a) Whenever the handling of any variety of grapes is regulated pursuant to § 925.52, each handler who handles grapes shall, prior thereto, cause such grapes to be inspected by the Federal or Federal-State Inspection Service and certified as meeting the applicable requirements of such regulation: *Provided*, That inspection and certification shall not be required for grapes which previously have been so inspected and certified if such prior inspection was performed within such period as may be established pursuant to paragraph (b) of this section. Promptly after the inspection and certification each such handler shall submit, or cause to be submitted, to the committee a copy of the certificate of inspection issued with respect to such grapes.

(b) The committee may, with the approval of the Secretary, establish a period prior to shipment during which the inspection required by this section must be performed.

(c) The committee may enter into an agreement with the Federal and Federal-State Inspection Services with respect to the costs of the inspection required by paragraph (a) of this section, and may collect from handlers their respective pro rata share of such costs.

Reports

§ 925.60 Reports.

(a) Each handler shall furnish to the committee, at such times and for such periods as the committee may designate, certified reports covering, to the extent necessary for the committee to perform its functions, each shipment of grapes as follows: (1) The name of the shipper and the shipping point; (2) the car or truck license number (or name of the trucker), and identification of the carrier; (3) the date and time of departure; (4) the variety; (5) the number and type of containers in the shipment; (6) the destination; and

(7) identification of the inspection certificate pursuant to which the grapes were handled.

(b) Upon request of the committee, made with the approval of the Secretary, each handler shall furnish to the committee, in such manner and at such times as it may prescribe, such other information as may be necessary to enable the committee to perform its duties under this part.

(c) Each handler shall maintain for at least two succeeding fiscal periods after the end of the fiscal period in which the transactions occurred, such records of the grapes received and disposed of by such handler as may be necessary to verify the reports such handler submits to the committee pursuant to this section.

(d) All reports and records submitted by handlers pursuant to the provisions of this section shall be received by, and at all times be in custody of one or more designated employees of the committee. No such employee shall disclose to any person, other than the Secretary upon request therefor, data or information obtained or extracted from such reports and records which might affect the trade position, financial condition, or business operation of the particular handler from whom received: *Provided,* That such data and information may be combined, and made available to any person, in the form of general reports in which the identities of the individual handlers furnishing the information are not disclosed and may be revealed to any extent necessary to effect compliance with the provisions of this part and the regulations issued thereunder.

Miscellaneous Provisions

§ 925.61 Compliance.

Except as provided in this part, no handler shall handle grapes except in conformity with the provisions of this part and the regulations issued thereunder.

§ 925.62 Right of the Secretary.

The members of the committee (including successors and alternates) and any agents, employees, or representatives thereof, shall be subject to removal or suspension by the Secretary at any time. Each and every regulation, decision, determination, or other act of the committee shall be subject to the continuing right of the Secretary to disapprove of the same at any time. Upon such disapproval, the disapproved action of the committee shall be deemed null and void, except as to acts done in reliance thereon or in accordance therewith prior to such disapproval by the Secretary.

§ 925.63 Termination.

(a) The Secretary shall terminate or suspend the operation of any and all of the provisions of this part whenever the Secretary finds that such provisions do not tend to effectuate the declared policy of the act.

(b) The Secretary shall terminate the provisions of this part whenever it is found by referendum or otherwise that such termination is favored by a majority of the growers: *Provided,* That such majority has during the current marketing season produced more than 50 percent of the volume of grapes which were produced within the production area for shipment in fresh form. Such termination shall become effective on the first day of December subsequent to the announcement thereof by the Secretary.

(c) The provisions of this part shall, in any event, terminate whenever the provisions of the act authorizing them cease to be in effect.

§ 925.64 Proceedings after termination.

(a) Upon the termination of the provisions of this part, the committee shall, for the purpose of liquidating the affairs of the committee, continue as trustees of all the funds and property then in its possession, or under its control, including claims for any funds unpaid or property not delivered at the time of such termination. Any action by said trustees shall require the concurrence of a majority of the trustees.

(b) The said trustees shall: (1) Continue in such capacity until discharged by the Secretary; (2) from time to time account for all receipts and disbursements and deliver all property on hand, together with all books and records of the committee and of the

trustees, to such persons as the Secretary may direct; (3) upon the request of the Secretary, execute such assignments or other instruments necessary or appropriate to vest in such person, full title and right to all of the funds, property, and claims vested in the committee or the trustees pursuant thereto.

(c) Any person to whom funds, property, or claims have been transferred or delivered, pursuant to this section, shall be subject to the same obligation imposed upon the committee and upon the trustees.

§ 925.65 Effect of termination or amendment.

Unless otherwise expressly provided by the Secretary, the termination of this part or any regulation issued pursuant to this part, or the issuance of any amendment to either thereof, shall not: (a) Affect or waive any right, duty, obligation, or liability which shall have arisen or which may thereafter arise in connection with any provision of this part or any regulation issued under this part; or (b) release or extinguish any violation of this part or any regulation issued under this part; or (c) affect or impair any rights or remedies of the Secretary or any other person with respect to any such violation.

§ 925.66 Duration of immunities.

The benefits, privileges, and immunities conferred upon any person by virtue of this part shall cease upon its termination, except with respect to acts done under and during the existence of this part.

§ 925.67 Derogation.

Nothing contained in this part is, or shall be construed to be, in derogation or in modification of the rights of the Secretary or of the United States: (a) To exercise any powers granted by the act or otherwise; or (b) in accordance with such powers, to act in the premises whenever such action is deemed advisable.

§ 925.68 Personal liability.

No member or alternate member of the committee and no employee or agent of the committee shall be held personally responsible, either individually or jointly with others, in any way whatsoever, to any person for errors in judgment, mistakes, or other acts, either of commission or omission, as such member, alternate, employee, or agent, except for acts of dishonesty, willful misconduct, or gross negligence.

§ 925.69 Separability.

If any provision of this part is declared invalid or the applicability thereof to any person, circumstance, or thing is held invalid, the validity of the remainder of this part or the applicability thereof to any other person, circumstance, or thing shall not be affected thereby.

(Secs. 1-19, 48 Stat. 31, as amended (7 U.S.C. 601-674))

§ 925.304 California Desert Grape Regulation 5.

During the period May 3 through August 1, 1985, and May 1 through August 15 of each year thereafter, no person shall handle any variety of grapes, except Emperor, Calmeria, Almeria, and Ribier varieties unless such grapes meet the following requirements: *Provided*, That no person shall pack any such grapes on any Saturday or Sunday, or on the Memorial Day or Independence Day holidays of each year, unless approved in accordance with paragraph (e).

(a) *Grade, size, and maturity.* Such grapes shall meet the minimum grade and size requirements specified in § 51.884 for U.S. No. 1 Table, as set forth in the United States Standards for Grades of Table Grapes (European or Vinifera Type, 7 CFR 51.880 through 51.912), except that grapes of the Flame Seedless variety shall meet the minimum berry requirement of ten-sixteenths of an inch, and minimum maturity standards in accordance with applicable sampling and testing procedures specified in §§ 1436.3, 1436.5, 1436.6, 1436.7, 1436.12, and 1436.17 of Article 25 of the California Administrative Code (Title 3).

(b) *Container and Pack.* (1) Such grapes shall be packed in one of the following containers, which are new

and clean, and which otherwise meet the requirements of § 1380.19(14) of Article 4, and §§ 1436.37 and 1436.38 of Article 25 of the California Administrative Code (Title 3):

(i) Sawdust pack with inside dimensions of 7¾ x 14^{1}⁹⁄₁₆ x 18⅝ inches, specified as container 28;

(ii) Polystyrene lug with inside dimensions of 6¾ x 12½ x 15⅝ inches, specified as container 38J;

(iii) Standard grape lug with dimensions in inches of 4½ to 8½ (inside) x 13½ to 14½ (outside) x 16⅝ to 17½ (outside); specified as container 38K;

(iv) Polystyrene lug with inside dimensions of 6¼ or 8¼ x 11½ x 18⅛ inches, specified as container 38Q;

(v) Grape lug with dimensions in inches of 4 to 7 inches (inside) x 15¾ (outside) x 19^{1}⁹⁄₁₆ (outside), specified as container 38R;

(vi) Such other types and sizes of containers as may be approved by the committee for experimental or research purposes.

(2) The minimum net weight of grapes in any such containers, except for containers containing grapes packed in sawdust, cork, excelsior or similar packing materials, and experimental containers, shall be 22 pounds based on the average net weight of grapes in a representative sample of containers.

(3) Such containers of grapes shall be plainly marked with the minimum net weight of grapes contained therein (with numbers and letters at least one-fourth inch in height), the name of the variety of the grapes and the name of the shipper.

(4) Such containers of grapes shall be plainly marked with the lot stamp number corresponding to the lot inspection conducted by an authorized inspector, except that such requirement shall not apply to containers in the center tier of a lot palletized in a 3 box by a 3 box pallet configuration.

(c) *Organically grown grapes.* Organically grown grapes (defined to mean grapes which have been grown for market as natural grapes by performing all the normal cultural practices, but no using any inorganic fertilizers or agricultural chemicals including insecticides, herbicides, and growth regulators, except sulfur) need not meet the minimum individual berry size requirements of this section if the following conditions and safeguards are met: (1) The handler of such grapes has registered and certified with the committee on a date specified by the committee the location of the vineyard, the acreage and variety of grapes, and such other information as may be needed by the committee to carry out these provisions; (2) each container of organically grown grapes bears the words "organically grown" on one outside end of the container in plain letters in addition to requirements specified under paragraph (b)(3) of this section.

(d) *By-product grapes.* The handling of grapes for processing (raisins, crushing and other by-products) is exempt from requirements specified in paragraphs (a), (b), and (c) if the committee determines that the person handling such grapes has secured the appropriate permit or order from the County Agricultural Commissioner, and the by-product plant or packing plant to which the grapes are shipped has adequate facilities for commercial processing, grading, packing or manufacturing of by-products for resale.

(e) *Suspension of packing holidays.* Upon approval of the committee, the prohibition against packing grapes on any Saturday or Sunday, or on the Memorial Day or Independence Day holidays of each year, may be modified or suspended to permit the handling of grapes provided such handling complies with procedures and safeguards specified by the committee.

(f) Certain maturity, container, and pack requirements cited in this regulation are specified in the California Administrative Code (Title 3), and are incorporated by reference. Copies of such requirements are available from William J. Doyle, Chief, Fruit Branch, F&V, AMS, USDA, Washington, D.C. 20250, telephone 202-447-5975. They are also available for inspection at the office of the Federal Register Information Center, Room 8301, 1100 L Street, N.W. Washington, D.C. 20408. This incorporation by reference was approved by the Director of the Federal Register. These materials are incorporated as they exist on the date of the approval and a notice of any

change in these materials will be published in the FEDERAL REGISTER.

(g) The Federal or Federal-State Inspection Service, Fruit and Vegetable Division, Agricultural Marketing Service, United States Department of Agriculture, is the governmental inspection service for certifying the grade, size, quality, and maturity of table grapes grown in the production area. The inspection and certification services will be available upon application in accordance with the rules and regulations governing inspection and certification of fresh fruits, vegetables, and other products (7 CFR Part 51): *Provided*: That all persons who request such inspection and certification must provide adequate facilities in which the inspections may be conducted, and the necessary equipment and incidental supplies that are considered as standard requirements for providing fresh inspection under Federal or Federal-State inspection procedures.

[50 FR 18851, May 3, 1985, as amended at 50 FR 32161, Aug. 9, 1985]

NOTE: After January 1, 1979 "Budget of Expenses and Rate of Assessment" regulations (e.g. sections .200 through .299) and "Handling" regulations (e.g. sections .300 through .399) which are in effect for a year or less, will not be carried in the *Code of Federal Regulations*. For FEDERAL REGISTER citations affecting these regulations, see the "List of CFR Sections Affected" in this volume.

PART 926—TOKAY GRAPES GROWN IN SAN JOAQUIN COUNTY, CALIFORNIA

Subpart—Order Regulating Handling

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AUTHORITY: Secs. 1-19, 48 Stat. 31, as amended; 7 U.S.C. 601-674.

Subpart—Order Regulating Handling

SOURCE: 24 FR 1238, Feb. 18, 1959, unless otherwise noted. Redesignated at 26 FR 12751, Dec. 30, 1961.

DEFINITIONS

§ 926.1 Secretary.

"Secretary" means the Secretary of Agriculture of the United States.

§ 926.2 Act.

"Act" means Public Act No. 10, 73d Congress (May 12, 1933), as amended and as reenacted and amended by the Agricultural Marketing Agreement Act of 1937 (50 Stat. 246), as amended, and further amended by Pub. L. 305, 80th Cong., approved August 1, 1947.

§ 926.3 Person.

"Person" means an individual, partnership, corporation, association, or any other business unit.

§ 926.4 Grapes.

"Grapes" means all strains of Tokay grapes grown in the production area.

§ 926.5 Grower.

"Grower" is synonymous with "producer" and means any person engaged in the production of grapes, who, as the owner of the vineyard or as a tenant thereon, has a financial interest in the crop from such vineyard. As used in § 926.52, "grower" shall also include the purchaser of a crop of grapes on the grapevines.

§ 926.6 Handler.

"Handler" is synonymous with "shipper" and means any person (except a common carrier of, or an operator of a cold storage for, grapes owned by another person), who, as

owner, agent, or otherwise, ships or handles grapes, or causes grapes to be shipped or handled, in fresh form, by rail, truck, boat, or any other means whatsoever.

§ 926.7 Handle.

"Handle" is synonymous with "ship" and means to sell, load in a conveyance for transportation, offer for transportation, transport, or in any other way to place grapes in the current of commerce between any point within the production area and any point outside thereof. The term "handle" also means to deliver grapes to a refrigerated storage warehouse for storage purposes, either within the production area or outside thereof. The term "handle" shall not include the sale of grapes on the vine or the transportation of grapes from a vineyard, or a packing shed within the production area, to a packing shed within the production area.

§ 926.8 Size.

"Size," as used with reference to the size of grapes, means the weight of a bunch of grapes.

§ 926.9 Standard package.

"Standard package" means the package designated by the Industry Committee and approved by the Secretary.

§ 926.10 Season.

"Season" means the 12-month period beginning April 1 of any year and ending March 31 of the following year, both inclusive.

§ 926.11 District.

"District" means the applicable one of the following described sub-divisions of the production area: (a) Acampo District means the school district of Houston; (b) Woodbridge District means the school district of Woods and that portion of the Galt Joint Union School District situated in San Joaquin County; (c) Lafayette District means the school districts of Lafayette, Henderson, Turner, Ray, Terminous, and New Hope; (d) Victor District means the school districts of Bruella, Victor, Lockeford, Oak View, and Clements; (e) Alpine District means the school districts of Alpine and Lodi; (f) Live Oak District means all of the school districts in the production area other than those included in the Acampo, Woodbridge, Lafayette, Victor, and Alpine Districts. The boundaries of the aforementioned school districts shall be those in effect on October 1, 1947.

§ 926.12 Production area.

"Production area" means San Joaquin County in the State of California.

§ 926.13 Pack.

"Pack" means (a) to place grapes into containers for shipment to market as fresh grapes and to deliver containers of grapes to a packing platform or shed or to a vehicle for transportation to market or storage, or (b) to place grapes into a shipping container in a packing shed: *Provided*, That, when used in and with respect to §§ 926.50 to 926.58, inclusive such term shall mean the specific arrangement, weight, grade or size, including the uniformity thereof, of the grapes within a container.

§ 926.14 Allotment period.

"Allotment period" means any three consecutive days commencing with such day as may be established in a regulation issued pursuant to § 926.61.

§ 926.15 Day.

"Day" means one calendar day except that Saturday and Sunday shall be considered as one such day.

§ 926.16 Container.

"Container" means a box, lug, crate, carton, or any other receptacle used in packing grapes for shipment as fresh grapes, and includes the dimensions, capacity, weight, marking, and any pads, liners, lids, and any or all appurtenances thereto or parts thereof. The term applies, in the case of grapes packed in consumer packages, to the master receptacle and to any and all packages therein.

§ 926.17 Premium quality grapes.

"Premium quality grapes" means and includes all grapes which meet or exceed the requirements as to grade, size, pack, and container prescribed by

the committee, with the approval of the Secretary, for premium quality grapes. The committee, with the approval of the Secretary, shall prescribe rules, regulations, and safeguards as it may deem necessary to assure that grapes marketed as Premium Quality grapes meet the prescribed requirements for such grapes.

[24 FR 1238, Feb. 18, 1959. Redesignated at 26 FR 12751, Dec. 30, 1961, and amended at 32 FR 13045, Sept. 14, 1967]

COMMITTEES

§ 926.20 Establishment of Industry Committee.

An Industry Committee consisting of seven members, one for each of the districts designated in § 926.11 and one member at large, is hereby established. There shall be an alternate for each member of the Committee.

§ 926.22 Nomination of members of Industry Committee.

(a) Except as provided in paragraph (c) of this section, nominations for members and alternate members of the Industry Committee shall be made at a meeting of growers for each of the districts. The growers in each district shall nominate one grower for member and one grower for alternate member. Such meetings shall be called by the Industry Committee at such times (on or before March 1 of each season) and at such places as said committee shall designate. The growers at each of such meetings shall select a chairman and a secretary therefor. After nominations have been made, the chairman or the secretary of such meeting shall transmit forthwith to the Secretary his certificate showing the name of each person for whom votes have been cast, whether as member or as alternate for a member and the number of votes received by each such person.

(b) In the nomination of members and alternate members of the Industry Committee, each grower shall be entitled to cast only one vote which shall be cast on behalf of himself, his agents, partners, and representatives, for each nominee to be selected from the district in which the grower produces grapes. A grower shall vote only in the meeting called for such district in which such grower produces grapes. Only growers who are personally present at such nomination meeting shall be entitled to vote for nominees. Each grower shall be entitled to vote only in one district and only for the nominees to be elected for such district.

(c) The nominees for member and alternate for the position of member at large shall be nominated on or before March 5th of each season by majority vote of the six member nominees nominated at the grower meetings provided for in paragraph (a) of this section: *Provided*, That the initial nominees for such positions may be nominated by the six members of the committee representing the specified districts of San Joaquin County.

§ 926.23 Eligibility for membership on Industry Committee.

A person nominated or selected to serve as a member or as an alternate member of the Industry Committee, for any particular season, shall be an individual grower who produced, during the season immediately prior to the season for which the grower has been so nominated or selected, at least 51 percent of the grapes shipped by him during such prior season; or such person shall be an officer, employee, or agent of an organization which produced, during such prior season, at least 51 percent of the grapes shipped by such organization during such prior season; and any such person shall be an individual grower who, or an officer, employee or agent of an organization which, produced grapes during such prior season in the particular district for which he was nominated or selected as a member or as an alternate member of such committee: *Provided*, That the member and alternate member at large may be any qualified grower.

§ 926.24 Selection of members of Industry Committee.

From the nominations made pursuant to § 926.22, or from other qualified persons, the Secretary shall select the seven members of the committee and an alternate for each such member.

§ 926.25 Failure to nominate.

In the event nominations for members and alternate members of the Industry Committee are not made, pursuant to § 926.22, on or before April 15 of the season for which such nominations should have been made, the Secretary may select the members and alternate members for such season without regard to nominations.

§ 926.26 Qualification.

Each person selected as a member or an alternate member of the Industry Committee shall qualify by filing with the Secretary a written acceptance thereof before performing any of his duties under this subpart.

§ 926.27 Terms of office.

Members and alternate members of the Industry Committee shall serve during the season for which they have been selected by the Secretary and until their successors are selected and have qualified.

§ 926.28 Alternate members.

An alternate for a member shall, in the event of such member's absence from a meeting of the Industry Committee, act in the place and stead of such member, and, in the event of such member's removal, resignation, disqualification, or death, shall act in the place and stead of such member until a successor for the unexpired term of such member has been selected.

§ 926.29 Vacancies.

To fill any vacancy occasioned by the failure of any person selected as a member or an alternate member of the Industry Committee to qualify, or in the event of the death, removal, resignation, or disqualification of any member or alternate member, a successor for the unexpired term of such person shall be nominated and selected in accordance with the provisions of this part, covering the nomination and selection of members and alternate members. If a successor for any such vacancy is not nominated within 20 days after such a vacancy occurs, the Secretary may select such successor, who shall have the same qualifications as his predecessor, without regard to nominations.

§ 926.30 Compensation.

The members of the Industry Committee, and the alternate members of such committee, may be reimbursed for expenses necessarily incurred by them in attending meetings of the said committee and in performing services, necessary in connection with this part, at the request of such committee; and they may receive compensation in an amount not in excess of $10.00 per day for attending each such meeting and for performing such services. The members of the Shippers' Advisory Committee, and the alternate members of such committee, may be reimbursed for expenses necessarily incurred by them in attending meetings of the said committee.

§ 926.31 Powers.

The Industry Committee shall have the following powers:

(a) To administer, as specifically provided in this part, the terms and provisions of this part;

(b) To make administrative rules and regulations in accordance with this part, and to effectuate the terms and provisions of this part;

(c) To receive, investigate, and report to the Secretary complaints of violation of this part; and

(d) To recommend to the Secretary amendments to this part.

§ 926.32 Duties.

The duties of the Industry Committee shall be as follows:

(a) To act as intermediary between the Secretary and any grower or handler;

(b) To keep minutes, books, and records which will clearly reflect all of the acts and transactions of the Industry Committee, which minutes, books, and records shall be subject at all times to examination by the Secretary;

(c) To investigate, from time to time, and to assemble data on the growing, harvesting, shipping, and marketing conditions with respect to grapes, and to engage in such research and service activities relating to the handling of

grapes as may be approved, from time to time, by the Secretary;

(d) To furnish to the Secretary such available information as the Secretary requests;

(e) To perform such duties as may be assigned to it from time to time, by the Secretary in connection with the administration of section 32 of the act to amend the Agricultural Adjustment Act, and for other purposes (49 Stat. 774; 7 U.S.C. 612c), as amended;

(f) To cause the books of the Industry Committee to be audited by one or more competent accountants at least once each season and at such other times as the Industry Committee may deem necessary or as the Secretary may request, and to file with the Secretary copies of all audit reports;

(g) To select a chairman of the Industry Committee and such other officers as it may deem advisable;

(h) To defend all legal proceedings against any Industry Committee members (individually or as members), or any officers or employees of such committee, arising out of any act or omission made in good faith pursuant to the provisions of this part;

(i) To employ a confidential employee or employees who shall perform the services required of the confidential employee or employees by the provisions of this part; to employ such other employees as may be necessary, including a manager who shall, among other duties, act as the secretary of the Industry Committee, and such manager may be designated as confidential employee; to determine the salary and duties of such manager and other employees; to authorize, if the committee deems such to be necessary, the manager for and on behalf of the committee to employ temporarily, subject to such limitations and qualifications as may be specified by the committee, such other persons as may be deemed necessary and to determine the respective salaries (which shall be reasonable and within the limitations of the budget and such other limitations as may be prescribed by the committee) and define the respective duties of such employees;

(j) To give the Secretary the same notice of meetings of the Industry Committee as is given to the members thereof;

(k) To submit to the Secretary for each season a budget of its expenses during such season;

(l) With the approval of the Secretary, to redefine the districts into which the production area has been divided in this part, or change the representation from any district on the Industry Committee: *Provided,* That if any such changes are made, representation on such committee from the various districts shall be based, so far as practical, upon the proportionate quantity of grapes shipped from the respective districts during the two seasons immediately preceding the season during which such changes are made;

(m) To authorize, whenever the committee deems it advisable, an employee or employees of the committee to perform any ministerial duties of the committee, subject to the exceptions and limitations set forth in this part: *Provided,* That such authorization by the committee shall specify the employee or employees and state definitely the limitations of the authority thus vested in the respective employee or employees: *Provided, further,* That the committee shall retain concurrent authority in connection with any such duties and shall not authorize any employee or employees to perform (1) the duties of the committee relating to the recommendations to the Secretary for the regulation of shipments pursuant to the provisions of this subpart; or (2) the duties or authority of the committee relating to the establishment of rules and regulations pursuant to the provisions and subject to the limitations set forth in this subpart;

(n) To establish such other committees or subcommittees to aid the Industry Committee in the performance of its duties under this part as the Industry Committee may deem it advisable; and

(o) Each season, prior to making any recommendation to the Secretary for a regulation of shipments pursuant to the provisions of this subpart, to determine the marketing policy to be followed during the ensuing season and to submit a report of such policy to the Secretary; said policy report to contain, among other provisions, infor-

mation relative to the estimated total production and shipments of grapes; the expected general quality and size of grapes; possible or expected demand conditions of different market outlets; supplies of competitive commodities; and appropriate analysis of the foregoing factors and conditions; and the type of regulation of shipments of grapes expected to be recommended.

§ 926.33 Procedure.

(a) A quorum of the Industry Committee shall consist of five members or alternates then serving in the place and stead of any members in attendance at the meeting, and all decisions of the Industry Committee shall require the affirmative vote of not less than five members.

(b) The Industry Committee may vote by mail, telephone or telegraph: *Provided,* That any action taken by the committee on a mail, telephone, or telegraph vote shall be by unanimous vote of all members of the committee or their appropriate alternates. Any vote by telephone or telegraph shall be confirmed in writing. At any assembled meeting, all votes shall be cast in person.

(c) The members of the Industry Committee, including successors and alternates, and any agent or employee appointed or employed by the Industry Committee, shall be subject to removal or suspension by the Secretary at any time. Each and every regulation, decision, determination, or other act of the Industry Committee shall be subject to the continuing right of the Secretary to disapprove of the same at any time. Upon such disapproval, the disapproved action of the said committee shall be deemed null and void, except as to acts done in reliance thereon or in compliance therewith prior to such disapproval by the Secretary.

§ 926.34 Funds and property.

(a) All funds received by the Industry Committee pursuant to the provisions of this part shall be used solely for the purposes herein specified; and the Secretary may require the Industry Committee and its members to account for all receipts and disbursements.

(b) Upon the death, resignation, removal, or expiration of the term of office of any member of the Industry Committee, all books, records, funds, and other property in his possession or under his control as such member, which relate to the business of the said committee, shall be delivered to his successor in office or to the committee, and such assignments and other instruments shall be executed as may be necessary to vest in such successor or in the committee full title to such books, records, funds, and property.

§ 926.40 Shippers' Advisory Committee.

(a) A Shippers' Advisory Committee, consisting of seven members who are individual persons selected by the handlers in accordance with the provisions of this subpart, is hereby established. There shall be an alternate for each member of such committee. An alternate member shall, in the event of such member's absence from a meeting of the committee, act in the place and stead of such member, and, in the event of a vacancy in the office of such member, shall act in the place and stead of such member until a successor for the unexpired term of such member has been selected.

(b) Six members and six alternate members of the Shippers' Advisory Committee shall be elected by the handlers at a general meeting of all handlers, at which each handler shall have one vote for each member position and each alternate member position for which he is eligible to vote. Three of such members shall be elected by, and from among, the five largest handlers (determined on the basis of the quantity of grapes shipped by the respective handler during the preceding season), or the employees or representatives of such handlers. Three alternate members for such members shall also be elected by such handlers. Three members and their alternates shall be elected by all other handlers. The seventh member of such committee and his alternate shall be elected jointly by the members of the Industry Committee and the other six members of the Shippers' Advisory Committee. The provisions of this

paragraph shall first become effective for the election of members of the Shippers' Advisory Committee who are to serve during the season beginning April 1, 1953.

(c) Any individual person, other than a member or an alternate member of the Industry Committee, shall be eligible for membership on the Shippers' Advisory Committee.

(d) The initial meeting of handlers, at which members of the Shippers' Advisory Committee are to be elected, shall be called and conducted by the Secretary or his agent as soon as possible after the selection of initial members of the Industry Committee. Each handler who desires to vote at the said meeting for the election of members of such committee shall file with the Secretary or his agent an affidavit stating his shipments of grapes during the preceding season. Election meetings held subsequent to the initial meeting shall be called and conducted each season by the Industry Committee as much in advance of the shipping season as is practical; and each handler who desires to vote thereat shall file, with the Industry Committee, a statement of his shipments of grapes during the season immediately preceding the season during which such meeting is held.

(e) The Shippers' Advisory Committee may attend each meeting of the Industry Committee held to consider recommendations with respect to regulations of shipments of grapes pursuant to the provisions of this subpart. The Shippers' Advisory Committee may advise the Industry Committee on matters relating to such recommendations, but shall have no vote with the Industry Committee in any matter.

Expenses and Assessments

§ 926.45 Expenses.

The Industry Committee is authorized to incur such expenses as the Secretary may find are reasonable and are likely to be incurred by the Industry Committee during the then current season for its maintenance and functioning and for such research and service activities relating to the handling of grapes as the Secretary may determine to be appropriate. The funds to cover such expenses shall be acquired by the levying of assessments as provided in § 926.46.

§ 926.46 Assessments.

Each handler who first ships grapes shall, with respect to each such shipment, pay to the Industry Committee, upon demand, such handler's pro rata share of the expenses which the Secretary finds will be incurred, as aforesaid, by the committee during such season. Such handler's pro rata share of such expenses shall be that proportion thereof which the total quantity of grapes shipped by such handler as the first shipper thereof during such season is of the total quantity of grapes shipped by all handlers as the first shippers thereof during such period. The Secretary shall fix the rate of assessment to be paid by such handlers, which rate may be adjusted from time to time by the Secretary in order to cover any later finding by the Secretary of the estimated expenses or the actual expenses of the Industry Committee during such season. Any such handler who ships grapes for the account of a grower may deduct, from the account sales covering such shipment or shipments, the amount of assessments levied on such grapes. In order to provide funds for the administration of the provisions of this part during the first part of a fiscal period before sufficient operating income is available from assessments on the current season's shipments, the Industry Committee may borrow money for such purposes.

[24 FR 1238, Feb. 18, 1959. Redesignated at 26 FR 12751, Dec. 30, 1961, and amended at 32 FR 13045, Sept. 14, 1967]

§ 926.47 Handler accounts.

(a) If at the end of a season, the assessments collected are in excess of expenses incurred, the Industry Committee, with the approval of the Secretary, may carry over such excess into subsequent fiscal periods as a reserve: *Provided,* That funds already in the reserve do not exceed approximately one season's expenses. Such reserve funds may be used (1) to cover any expenses authorized by this part, and (2)

to cover necessary expenses of liquidation in the event of termination of this part. If any such excess is not retained in a reserve, each handler entitled to a proportionate refund shall be credited with such refund against the operations of the following season or be paid such refund. Upon such termination, any funds not required to defray the necessary expenses of liquidation shall be disposed of in such manner as the Secretary may determine to be appropriate: *Provided,* That to the extent practical, such funds shall be returned pro rata to the persons from whom such funds were collected.

(b) The Industry Committee may, subject to the approval of the Secretary, maintain a suit in its own name or in the names of its members for the collection of any handler's pro rata share of expenses.

[32 FR 13046, Sept. 14, 1967]

Research and Development

§ 926.49 Research.

(a) The committee may, with the approval of the Secretary, establish or provide for the establishment of marketing research and development projects designed to assist, improve, or promote the marketing, distribution, and consumption of Tokay grapes. Such projects may provide for any form of marketing promotion, including paid advertising. The expenses of such projects shall be paid from funds collected pursuant to § 926.46.

(b) In recommending projects pursuant to this section, the committee shall give consideration to the following factors:

(1) The expected supply of grapes in relation to market requirements;

(2) The supply situation among competing areas and commodities; and

(3) The need for marketing research with respect to any marketing development activity and the need for a coordinated effort with USDA's Plentiful Foods Program.

(c) If the committee should conclude that a program of marketing research or development should be undertaken or continued pursuant to this section in any crop year, it shall submit the following for the approval of the Secretary:

(1) Its recommendations as to funds to be obtained pursuant to § 926.46;

(2) Its recommendations as to any marketing research projects; and

(3) Its recommendations as to promotion activity and paid advertising.

[32 FR 13046, Sept. 14, 1967]

Regulation by Grade, Size, Container and Pack

§ 926.50 Recommendation of Industry Committee.

Whenever the Industry Committee deems it advisable (a) to limit the shipment of grapes to particular grades, sizes, packs, or containers, or any combination thereof, or (b) to prescribe the requirements in terms of grade, size, pack, or container, or any combination thereof, for premium quality grapes, and to require that grapes that are handled and designated as conforming to the requirements prescribed for premium quality grapes shall meet or exceed such requirements, it shall so recommend to the Secretary. At the time of submitting any such recommendation, the said committee shall submit to the Secretary the date and information upon which it acted in making such recommendation, including factors affecting the supply of, and the demand for, grapes by grades and sizes thereof, and such other information as the Secretary may request. The said committee shall promptly give adequate notice to the handlers and growers of any such recommendation submitted to the Secretary.

[32 FR 13046, Sept. 14, 1967]

§ 926.51 Establishment of regulations.

(a) Whenever the Secretary finds, from the recommendations and information submitted by the Industry Committee, or from other available information, that (1) to limit the shipment of grapes to particular grades, sizes, packs, or containers, or any combination thereof, or (2) to prescribe requirements in terms of grade, size, pack, or container, or any combination thereof, for premium quality grapes and to require that grapes that are handled and designated as conforming to the requirements prescribed for

premium quality grapes shall meet or exceed such requirements, would tend to effectuate the declared policy of the act, he shall so limit the shipment as set forth in paragraph (a)(1) of this section or require grapes to conform to such requirements as may be prescribed in accordance with paragraph (a)(2) of this section during a specified period.

(b) The Secretary shall immediately notify the Industry Committee of the issuance of any such regulation, and the said committee shall promptly give adequate notice thereof to handlers and to growers.

[32 FR 13046, Sept. 14, 1967]

§ 926.52 Exemptions.

(a) The Industry Committee shall, subject to the approval of the Secretary, adopt such procedural rules as are necessary to govern the issuance of exemption certificates under paragraph (b) of this section.

(b) In the event the Secretary issues a regulation pursuant to § 926.51, the Industry Committee shall issue an exemption certificate to any grower who furnishes proof, satisfactory to such committee, that by reason of conditions beyond his control he will be prevented, because of the regulation issued, from shipping or having shipped in fresh fruit channels from a particular vineyard a percentage of his crop of grapes equal to (1) the average percentage of grapes, as determined by the committee, produced in and so shipped from the production area during the preceding three seasons or (2) the average percentage of grapes produced in and so shipped from such vineyard during the preceding three seasons, whichever percentage is the greater. The certificate shall permit such grower to ship, or have shipped, in fresh fruit channels, a percentage of his crop of grapes from such vineyard equal to such greater percentage: *Provided*, That as to vineyards having an age of nine years or less, the committee shall each season establish, for the vineyards of each such age, the quantity of grapes, per acre, likely to be shipped from such vineyards during that season and the applicable quantity shall be used in lieu of the quantity of grapes determined by the committee pursuant to paragraph (b)(1) of this section. In computing the aforesaid quantities that were shipped during the preceding three seasons, there shall be omitted the aggregate quantities of grapes shipped under exemption certificates.

(c) If any grower is dissatisfied with the action of the Industry Committee taken with respect to his application for an exemption certificate, such grower may appeal to the Secretary: *Provided*, That such appeal shall be made promptly. The Secretary may, upon an appeal made as aforesaid, modify or reverse the action of the committee. The authority of the Secretary to supervise and control the issuance of exemption certificates is unlimited and plenary; and any determination by the Secretary with respect to an exemption certificate shall be final and conclusive.

(d) The Industry Committee shall, from time to time, submit to the Secretary reports stating in detail the number of exemption certificates issued, the quantity of grapes thus exempted, and such additional information with respect thereto as the Secretary may request.

(e) Exemptions granted under the provisions of this section shall apply only as to grade and size regulations issued by the Secretary under § 926.51; and all shipments of grapes under exemption certificates, issued pursuant to this section, shall be subject to, and limited by, such regulations as may be effective under § 926.61 at the time of the respective shipment.

Minimum Standards of Quality and Maturity

§ 926.55 Recommendation.

Whenever the Industry Committee deems it advisable to establish and maintain in effect during any period minimum standards of quality or maturity, or both, governing the shipment of grapes pursuant to §§ 926.55 and 926.56, it shall so recommend to the Secretary. Each such recommendation of the committee shall be in terms of (a) freedom of the grapes from material impairment of shipping quality; (b) freedom of the grapes from material impairment of edible

quality; (c) freedom of the grapes from serious damage to appearance; (d) minimum maturity requirements; or (e) any combination of the foregoing. With each such recommendation, the committee shall submit to the Secretary the information and data on which such recommendation is predicated; and the committee shall also submit to the Secretary such other information as he may request. The committee shall give prompt notice to handlers and growers of any such recommendation.

§ 926.56 Establishment.

Whenever the Secretary finds, from the recommendation and information submitted by the Industry Committee, or from other available information, that to establish minimum standards of quality or maturity, or both, for grapes and to limit the shipment of grapes during any period to those meeting the minimum standards would be in the public interest and would tend to effectuate the declared policy of the act, he shall establish such standards, designate such period, and so limit the shipment of such grapes. The Secretary shall immediately notify the Industry Committee of the issuance of such regulation, and said committee shall give such notice thereof as may be reasonably calculated to bring such regulation to the attention of the handlers and growers.

INSPECTION AND CERTIFICATION

§ 926.58 Inspection.

During any period in which shipments of grapes are regulated pursuant to this part, each handler shall, prior to making each shipment of grapes, cause such shipment to be inspected by an authorized representative of the Federal-State Inspection Service. Promptly thereafter, each such shipper shall submit or cause to be submitted to the Industry Committee a copy of the shipping point inspection certificate issued by the Federal-State Inspection Service with respect to such shipment: *Provided*, That this provision shall not be applicable to a handler who ships grapes which have been so inspected and the copy of such inspection certificate has been submitted to the Industry Committee.

REGULATION BY VOLUME

§ 926.60 Recommendation for volume regulation.

(a) Whenever the Industry Committee finds, after investigation of the factors enumerated in paragraph (b) of this section, that the supply of grapes available for shipment exceeds the demand therefor and that it is advisable to regulate the handling of grapes pursuant to the provisions of §§ 926.60 through 926.72, it shall so recommend to the Secretary. Each such recommendation shall specify the period of time during which such regulation shall be effective and the respective total quantities of grapes which the committee deems advisable to be handled each allotment period during such period of time. The committee shall promptly report its findings and recommendations, together with supporting information, to the Secretary.

(b) In making each such recommendation, the Industry Committee shall give due consideration to the following factors: (1) Market prices for grapes; (2) supply, quality, and condition of grapes in the production area; (3) the supplies of all varieties of grapes on hand in, and en route to, the principal markets; (4) market prices and supplies of competitive fruits, including other varieties of grapes; (5) the probable daily shipments of grapes in the absence of regulation; (6) trend and level of consumer income; and (7) other relevant factors.

(c) The Industry Committee may, at any time, recommended to the Secretary that the quantity of grapes that may be handled during any such allotment period be increased or decreased, or that such regulation be terminated. Any such recommendation shall be supported by the reasons and information relied upon by the committee in making such recommendation.

(d) The Industry Committee shall give reasonable notice to growers and handlers of each meeting to consider recommendations for regulation, or for the modification or termination of regulation, pursuant to the provisions

of this section. The committee shall also give prompt notice to growers and handlers of any such recommendation.

§ 926.61 Issuance of volume regulation.

(a) Whenever the Secretary finds, from the recommendations and information submitted by the Industry Committee, or from other available information, that to limit the total quantity of grapes that may be handled during one or more allotment periods would tend to effectuate the declared policy of the act, he shall so limit the shipment of grapes. The Secretary may at any time increase or decrease the quantity of grapes which may be handled during an allotment period, or may terminate such regulation: *Provided,* That no decrease in the quantity of grapes which may be handled during an allotment period shall be made effective after the beginning of such allotment period.

(b) The Secretary shall immediately notify the Industry Committee of the issuance of each such regulation, and of each modification or termination thereof; and the committee shall give such notice thereof as may be reasonably calculated to bring such action to the attention of growers and handlers.

§ 926.62 Allotments.

(a) Whenever the Secretary has fixed the total quantity of grapes that may be handled during an allotment period, the Industry Committee shall compute, for each person entitled thereto, the quantity of grapes which may be shipped by such person during such period. Such quantity shall be the allotment of such person and shall be in an amount equal to the product obtained by multiplying:

(1) The quantity of grapes fixed by the Secretary as the total quantity of grapes that may be handled during such allotment period, or

(2) The quantity of grapes so fixed by the Secretary less the portion thereof for allocation as adjusted allotment pursuant to § 926.65,

whichever is applicable, by such person's allotment percentage, computed in accordance with § 926.64. The Industry Committee shall notify each such person of his allotment on the day immediately preceding the allotment period.

(b) No person shall ship grapes during any allotment period when grapes are regulated pursuant to § 926.61 unless such person has allotment or adjusted allotment, pursuant to §§ 926.62 through 926.72, to ship such grapes: *Provided,* That allotment shall not be required: (1) To deliver grapes to a refrigerated storage warehouse, for storage purposes, within the State of California; (2) to handle grapes pursuant to, and for the purposes specified in § 926.87; and (3) to handle grapes which meet the requirements for premium quality grapes.

§ 926.63 Application for allotment.

(a) Each person who proposes to ship grapes as the first handler thereof during any period in which grapes may be regulated pursuant to § 926.61 shall submit to the Industry Committee, at such time and in such manner as the committee may prescribe, a written application for allotment. Such application shall be substantiated in such manner and shall be supported by such information as the committee may require, including: (1) An accurate description of the location of each vineyard, or portion thereof, from which grapes will be handled by the applicant during the current season; (2) the number of acres and the age of the vines in each such vineyard or portion thereof; (3) the name and address of the producer, or authorized agent, for each such vineyard or portion thereof; (4) the number of standard packages, or the equivalent thereof, of grapes from each such vineyard, or portion thereof, that were shipped during each of the two preceding seasons; and (5) information identical to that required in paragraphs (a) (1) through (4) of this section with respect to all other vineyards or portions thereof from which the applicant shipped grapes during either or both of the two preceding seasons. If the applicant does not have the record of shipments of grapes from a particular vineyard or vineyards but can furnish the record for a group of vineyards of which such vineyard or vineyards are a part, he shall set forth

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such record in his application and the shipments from each such vineyard shall be considered to be equal to the product obtained by multiplying the number of acres contained in that vineyard by the average shipments per acre for such group.

(b) The Industry Committee shall check the accuracy of the information submitted pursuant to paragraph (a) of this section and of § 926.75. If the committee finds that there is an error, omission, or inaccuracy in such information, it shall correct the same and shall notify the applicant, giving the reasons therefor. Upon request, the applicant shall be given an opportunity to discuss with the committee the factors considered in making the correction. If it is determined that an error, omission, or inaccuracy has resulted in a person receiving more or less allotment than that to which such person is entitled under the provisions of this subpart, such person's allotment shall be adjusted, over such period as may be determined by the committee, to the extent required to offset the error, omission, or inaccuracy.

§ 926.64 Allotment percentage.

(a) The allotment percentage of each applicant entitled thereto for each allotment period shall be seventy-five percent of the percentage obtained by dividing the total grape shipments from such applicant's vineyards as reported pursuant to § 926.63(a) (1) to (4), by the total grape shipments during the preceding two years from vineyards of all applicants plus twenty-five percent of the following applicable percentage: (1) For the first allotment period of each season, the percentage obtained by dividing the total quantity of grapes packed by or for the applicant during the first 6 days of the 9 days immediately preceding the first allotment period by the total quantity of grapes packed by or for all applicants during such 6 days; (2) for the second allotment period each season, the percentage obtained by dividing the total quantity of grapes packed by or for the applicant during the 3 days immediately preceding the first allotment period by the total quantity of grapes packed by or for all applicants during such 3 days; (3) for the third and each succeeding allotment period each season, the percentage obtained by dividing the total quantity of grapes packed by or for the applicant during the allotment period penultimate the allotment period to which the allotment shall apply by the total quantity of grapes packed by or for all applicants during such period.

(b) If a person gains or loses the right to ship grapes from a vineyard by reason of a grower's transfer of his grapes from one person to another, there shall be a corresponding increase or decrease in that portion of the respective person's allotment percentage which is based on previous shipments. The person gaining the right so to ship grapes may submit an application to the Industry Committee for such increase, accompanied by a verification of the transfer by the grower or the person losing the right to ship such grapes. Such increase and decrease shall not be effective for any allotment period unless such application is received by the committee at least three days prior to such period.

(c) An allotment percentage shall be computed for, and allotment issued to, a person only if such person has made application therefor in accordance with the provisions of this section.

§ 926.65 Adjustment of allotment.

A portion of the total quantity of grapes fixed by the Secretary as the quantity of such grapes which may be handled during an allotment period shall be allocated to handlers as adjusted allotment in accordance with the provisions of this section.

(a) Each season, prior to recommending regulations pursuant to § 926.60, the Industry Committee shall establish the quantity of grapes per acre which is likely to be shipped during the current season from mature vineyards and separate quantities for vineyards from nine years to one year of age, respectively. In establishing these quantities the committee shall consider (1) the estimated production of grapes for the current season; (2) the average number of standard packages of grapes per acre

shipped from the production area during preceding seasons; (3) the estimated total acreage of grapes in the production area during the current and past seasons; (4) the acreage of grapes which have been thinned; (5) production records of mature vineyards and of vineyards from nine years to one year of age; and (6) other relevant factors.

(b) Adjusted allotment shall be allocated to, and held by the Industry Committee for the account of, handlers proposing to ship grapes as first handlers thereof (1) from a vineyard from which grapes were not shipped during one or both of the two preceding seasons; (2) from a vineyard for which records of shipments during one or both of such seasons are not available; or (3) from a vineyard with less shipments per acre during one or both of such seasons than the quantity established by the Industry Committee in accordance with paragraph (a) in this section for vineyards of similar age. The amount of adjusted allotment so allocated and held for the account of a handler shall be equal to the difference between the allotment to which such handler is entitled pursuant to the provisions of § 926.62(a)(1) and the allotment to which such handler would be entitled pursuant to the provisions of said paragraph (a)(1) if the previous shipments from such vineyard were equal to the applicable quantity estimated by the committee in accordance with paragraph (a) of this section: *Provided,* That in no event shall such amount exceed the amount of adjusted allotment requested by such handler.

(c) Any handler entitled to adjusted allotment may apply to the Industry Committee on forms prescribed by it for such allotment. Such application shall be filed with the committee at least three days prior to the first allotment period for which he desires adjusted allotment and shall contain the following information: (1) The identity of each vineyard for which adjusted allotment is requested; (2) the allotment period or periods for which allotment is requested; and (3) the quantity of adjusted allotment requested for each such period.

(d) Any handler to whom adjusted allotment is allocated for a vineyard may request the application of such adjusted allotment only to the extent that he has packed, or has had packed, grapes from such vineyard in excess of that portion of his allotment which is based on previous shipments from such vineyard. The Committee shall release to such handler such allocated adjusted allotment upon evidence, satisfactory to it, of performance as herein described: *Provided,* That any quantity of grapes packed from a vineyard in excess of the quantity of adjusted allotment plus allotment based on previous shipments from such vineyard may be carried forward and applied to the adjusted allotment for such vineyard in subsequent allotment periods.

(e) Any adjusted allotment held for the account of handlers upon expiration of an allotment period shall be added proportionately to the allotment of all handlers during the next succeeding allotment period.

§ 926.67 Undershipments.

If during any allotment period a handler ships grapes in an amount less than his allotment he may ship during the next succeeding allotment period a quantity of grapes equal to such undershipment: *Provided,* That the amount of the undershipment which such handler may ship during such period shall not exceed the equivalent of such percentage of the total allotment issued to him for the allotment period during which such undershipment occurred as shall be established by the Industry Committee, or 1,105 standard packages of grapes, whichever is the greater.

§ 926.68 Overshipments.

During any allotment period a handler may ship a quantity of grapes equivalent to five hundred standard packages of such grapes in addition to his allotment for such period. Any such overshipment shall be deemed to be a shipment against the allotment of such handler for the allotment period next succeeding.

§ 926.69 Allotment loans.

A person to whom allotment has been issued may lend such allotment, or any part thereof, to another person to whom allotment also has been issued subject to the following terms and conditions:

(a) Allotment loans shall be transacted only upon notice to and under the supervision of the Industry Committee.

(b) Allotment shall be repaid in the allotment period immediately following the period in which it is borrowed.

(c) Allotment may be loaned for use only during the allotment period in which it is issued.

(d) Allotment which is repaid may be used only during the allotment period in which the repayment is made.

(e) No person may borrow and lend allotment during the same period; and

(f) Except as provided in this section and in § 926.71, allotments are not transferable.

§ 926.70 Priority of allotment.

Shipments during an allotment period shall first be applied against allotment issued for such allotment period before being applied against allotment available by reason of an undershipment, allotment loan, or repayment of allotment, in that order.

§ 926.71 Assignment of allotment.

In connection with each handling of grapes which requires allotment, each handler shall, except with respect to shipments by rail car, at the time of shipment issue to the consignee or purchaser or agent thereof, an assignment of allotment certificate covering each quantity of grapes so handled. Such assignment of allotment certificate shall be on the form, and distributed in the manner, prescribed by the Industry Committee and shall contain the following information: (a) Date of shipment; (b) name and address of consignee or purchaser; (c) number of standard packages of grapes or the equivalent thereof in weight; (d) destination of shipment; (e) the license number or numbers of the truck and trailer transporting such grapes from the handler's place of business; and (f) the name of the handler issuing the assignment certificate. Such assignment shall also contain a certification to the United States Department of Agriculture and to the Industry Committee as to the truthfulness of the information shown thereon.

§ 926.72 Right of appeal.

If any grower or handler is dissatisfied with any action taken by the Industry Committee pursuant to §§ 926.60 through 926.72, such grower or handler may appeal to the Secretary: *Provided,* That such appeal shall be made promptly. Any such appeal shall be made by filing with the Industry Committee a written notice of appeal stating the grounds upon which the appeal is made. Thereupon, the Industry Committee shall review the action being contested and shall determine whether and to what extent its original action should be revised. If the committee affirms its original action, it shall promptly forward the notice of appeal to the Secretary together with all data and information applicable thereto. The Secretary may, upon an appeal made as aforesaid, affirm, modify, or reverse the action of the Industry Committee and such action by the Secretary shall be final.

MODIFICATION, SUSPENSION, OR TERMINATION

§ 926.73 Modification, suspension, or termination.

Whenever the Industry Committee deems it advisable to recommend to the Secretary the modification, suspension, or termination of any or all of the regulations established pursuant to this subpart, it shall so recommend to the Secretary. If the Secretary finds upon the basis of such recommendation or from other available information that to modify such regulations will tend to effectuate the declared policy of the act, he shall so modify such regulations. If the Secretary finds, upon the basis of such recommendation or upon the basis of other available information that any such regulations obstruct or do not tend to effectuate the declared policy of the act, he shall suspend or terminate such regulations. The Secretary

shall immediately notify the Industry Committee, and such committee shall promptly give adequate notice to handlers and growers, of the issuance of each order modifying, suspending, or terminating any such regulations. In like manner and upon the same basis the Secretary may terminate any such modification or suspension.

Reports by Handlers

§ 926.75 Reports.

For the purpose of enabling the Industry Committee to perform its functions under this subpart, each handler shall furnish, or authorize any or all railroad, transportation, and cold storage agencies to furnish, to the confidential employees of the Industry Committee, complete information, in such form and at such times and substantiated in such manner as shall be prescribed by the Industry Committee, with regard to each shipment of grapes. Such information may include (a) a report of all grapes packed by or for such handlers; (b) a report of each shipment outside the production area, except the delivery of grapes to a refrigerated storage warehouse for storage purposes within the State of California, which report shall include all grapes shipped from such storage and shall contain with respect to each such shipment the date and time of shipment, the name and address of the shipper, the car or truck license number, the number of standard packages of grapes or the billing weight thereof, the grade of such grapes, the name of the grower for whom such grapes are shipped, the place where the shipment originated, the destination and any diversion of the shipment made through any and all agencies; (c) a report of each delivery of grapes to a refrigerated storage warehouse, for storage purposes, within the State of California showing the name and address of the shipper, the location of the storage warehouse, and the number of standard packages of grapes or the billing weight thereof; (d) a report of each shipment made within the area of production showing the name and address of the shipper, the name and address of the consignee or purchaser, and the number of standard packages of grapes or the billing weight of the shipment; (e) a report by vineyards of all grapes packed from vineyards for which adjusted allotment was issued under the provisions of § 926.65; and (f) such other reports as the Industry Committee may require. Such information may be compiled by the confidential employees and made available in summary form to all handlers and other interested persons who request a copy thereof: *Provided*, That such compilation or summary shall not reveal the identity of the individual furnishing the information. Such confidential employees shall not disclose, to any person other than the Secretary, any information that may be obtained pursuant to this section, except in the aforesaid manner.

Effective Time and Termination

§ 926.77 Effective time.

The provisions of this subpart shall become effective August 20, 1940, and shall continue in force until terminated in one of the ways specified in § 926.78.

§ 926.78 Termination.

(a) The Secretary may at any time terminate the provisions of this subpart by giving at least 1 day's notice by means of a press release or in any other manner which he may determine.

(b) The Secretary may terminate or suspend the operation of any or all of the provisions of this subpart whenever he finds that any such provision obstructs or does not tend to effectuate the declared policy of the act.

(c) The Secretary shall terminate the provisions of this subpart at the end of any current marketing period whenever he finds that such termination is favored by a majority of the growers who, during such current marketing period, have been engaged in the production of grapes for market: *Provided*, That such majority have, during such period, produced for market more than 50 percent of the total volume of grapes produced for market during such period; but such termination shall be effective only if notice thereof is given on or before

April 1 of such current marketing period.

(d) The provisions of this subpart shall, in any event, terminate whenever the provisions of the act authorizing them cease to be in effect.

§ 926.79 Proceedings after termination.

(a) Upon the termination of the provisions of this subpart, the members of the Industry Committee then functioning shall, for the purpose of liquidating the affairs of the committee, continue as trustees of all funds and property then in the possession or under the control of the committee, including claims for any funds unpaid or property not delivered at the time of such termination.

(b) The trustees shall continue in such capacity until discharged by the Secretary; shall, from time to time, account for all receipts and disbursements, or deliver all funds and property on hand, together with all books and records of the Industry Committee and the trustees, to such person as the Secretary may direct; and shall, upon the request of the Secretary, execute such assignments or other instruments necessary or appropriate to vest in such person full title to all of the funds and claims vested in the committee or the trustees pursuant to this part.

(c) Any funds collected for expenses pursuant to the provisions of this subpart and held by such trustees or such other person, over and above amounts necessary to meet outstanding obligations and the expenses incurred necessarily by the trustees or such other person in the performance of their duties under this part, shall, as soon as practicable after the termination of this part, be returned to the handlers pro rata in proportion to their contributions made pursuant to § 926.46.

(d) Any person to whom funds, property, or claims have been delivered by the Industry Committee or its members upon direction of the Secretary, as provided in this section, shall be subject to the same obligations and duties with respect to said funds, property, or claims as are imposed upon the members of the committee or upon the trustees.

Miscellaneous

§ 926.85 Compliance.

Except as otherwise specifically provided in this part, no handler shall ship grapes, the shipment of which has been prohibited by the Secretary in accordance with the provisions of this part, and no handler shall ship grapes except in conformity with the provisions of this part.

§ 926.86 Right of the Secretary.

Any rules, regulations, or determinations of the Industry Committee which are submitted to the Secretary for his approval, pursuant to the provisions of this part, may be modified or changed by the Secretary prior to such approval, without further action thereon by the said committee.

§ 926.87 Grapes not subject to regulation.

(a) Except as otherwise provided in this section, nothing contained in this subpart shall be construed to authorize any limitation of the right of any person to ship:

(1) Grapes in any quantity for consumption by a charitable institution;

(2) Grapes in any quantity for distribution for relief purposes;

(3) Grapes in any quantity for distribution by a relief agency;

(4) Grapes in commercial quantities for commercial conversion into by-products, including wine and juice;

(5) Grapes not in excess of such quantity as may be established by the Industry Committee, with the approval of the Secretary, as the minimum quantity below which shipments may be made without limitation; or

(6) Grapes in such types of shipments as may be established by the Industry Committee, with the approval of the Secretary, as the types of shipments which may be made without limitation.

(b) No assessment shall be levied on any grapes not subject to regulation under paragraph (a) of this section. The Industry Committee may, with the approval of the Secretary, prescribe such rules and regulations as it may deem necessary to prevent grapes so shipped from entering commercial

fresh fruit channels of trade contrary to, or in violation of, this part.

§ 926.88 Liability of Industry Committee members.

No member, alternate member, or employee of the Industry Committee shall be held liable, either individually or jointly with others, in any way whatsoever, to any handler or to any other person for errors in judgment, mistakes, or other acts, either of commission or omission, as such member, alternate member, or employee, except for acts of dishonesty.

§ 926.89 Agents.

The Secretary may, by a designation in writing, name any person, including any officer or employee of the Government, or name any bureau or division in the United States Department of Agriculture, to act as his agent or representative in connection with any of the provisions of this part.

§ 926.90 Duration of immunities.

The benefits, privileges, and immunities conferred upon any person by virtue of this subpart shall cease upon the termination hereof, except with respect to acts done under and during the existence of this subpart.

§ 926.91 Separability.

If any provision of this subpart is declared invalid or the applicability thereof to any person, circumstance, or thing is held invalid, the validity of the remainder of this subpart or the applicability thereof to any other person, circumstance, or thing shall not be affected thereby.

§ 926.92 Derogation.

Nothing contained in this subpart is or shall be construed to be in derogation or in modification of the rights of the Secretary or of the United States to exercise any powers granted by the Act or otherwise, or, in accordance with such powers, to act in the premises whenever such action is deemed advisable.

§ 926.93 Amendments.

Amendments to this subpart may be proposed, from time to time, by the Industry Committee or by the Secretary.

§ 926.94 Effect of termination or amendment.

Unless otherwise expressly provided by the Secretary, the termination of this subpart or of any regulation issued pursuant to this subpart, or the issuance of any amendment to either thereof, shall not (a) affect or waive any right, duty, obligation, or liability which shall have arisen or which may arise in connection with any provision of this subpart or any regulation issued under this subpart, or (b) release or extinguish any violation of this subpart or of any regulation issued under this subpart, or (c) affect or impair any rights or remedies of the United States, or Secretary, or of any other person with respect to any such violation.

Subpart—Rules and Regulations

SOURCE: 25 FR 4640, May 26, 1960, unless otherwise noted. Redesignated at 26 FR 12751, Dec. 30, 1961.

DEFINITIONS

§ 926.100 Order.

"Order" means Order No. 926, as amended (§§ 926.1 to 926.94; 24 FR 1238), regulating the handling of Tokay grapes grown in San Joaquin County in California.

§ 926.101 Marketing agreement.

"Marketing agreement" means Marketing Agreement No. 93, as amended.

§ 926.102 Other terms.

Other terms used in this subpart shall have the same meaning as when used in the marketing agreement and order.

§ 926.103 Standard package.

"Standard package" means the standard grape lug No. 37G specified in section 828.53 of the Agricultural Code of California.

GENERAL

§ 926.118 Communications.

Unless otherwise prescribed in this subpart or in the marketing agreement and order, or required by the Industry Committee, all reports, applications, submittals, requests, and communications in connection with the marketing agreement and order shall be addressed to Industry Committee, P.O. Box 877, Lodi, California.

NOTICE OF RECOMMENDATIONS AND REGULATIONS; EXEMPTION CERTIFICATES

§ 926.120 Notice of recommendation.

Notice of each recommendation made by the Industry Committee to the Secretary, with respect to regulation of the shipment of grapes pursuant to § 926.50, § 926.55, or § 926.60, or the modification, suspension, or termination of any such regulation pursuant to § 926.60 or § 926.73, shall be given by the Industry Committee by having a general statement of the contents of the recommendation published once in a newspaper of general circulation in the City of Lodi, California.

§ 926.121 Notice of regulation.

Notice of each regulation of the shipment of grapes, and of each modification, suspension, or termination thereof, shall be given by the Industry Committee by having a general statement of the contents of the regulation, modification, suspension, or termination, as the case may be, mailed to each handler whose name appears on the records of the Industry Committee for the then current year, and by having such statement published once as a news item in a newspaper of general circulation in the City of Lodi, California: *Provided,* That legal notice of each regulation and any modification, suspension, or termination shall be deemed to be given by publication thereof in the FEDERAL REGISTER as required by law.

§ 926.122 Exemption certificates.

Exemption certificates shall be issued by the Industry Committee pursuant to the following:

(a) Applications for exemption certificates shall be submitted to the Industry Committee on forms prescribed and furnished by the committee and shall contain the following information:

(1) Name and address of applicant.

(2) Location of vineyard from which grapes are to be shipped pursuant to the exemption certificate.

(3) The name, if any, of the vineyard, the number of acres and age of vines of the grapes with respect to which exemption is requested.

(4) Total quantity of Tokay grapes produced in the aforesaid vineyard for each of the preceding three seasons, the quantity shipped in fresh form for each of such seasons, and the quantity shipped under exemption certificates for each of such seasons.

(5) Quantity of grapes applicant has shipped in fresh fruit channels and disposed of otherwise from the beginning of the current season to the date of the application.

(6) The conditions beyond the control of the applicant which prevent the grapes for which exemption is requested from meeting the requirements of the grade and size regulation then in effect.

(7) Name of shipper if different from applicant.

(8) Such additional information as the Industry Committee may require in order to determine whether the applicant is entitled to an exemption certificate.

(b) It shall be the sole responsibility of the applicant to furnish requisite proof to the Industry Committee of the conditions beyond his control affecting his grapes. Conditions beyond the control of the grower may include adverse climatic conditions, excesses or shortages of water not caused by faulty irrigation practices, or other conditions not resulting from the failure of the grower to follow proper cultural and harvesting practices.

(c) The Industry Committee shall promptly investigate all statements contained in the application and thereafter shall determine whether such application shall be approved. Approval shall be evidenced by the issuance to the applicant of an exemption certificate. In the case of disap-

proval, a written notice of such disapproval and the reason therefor shall be forwarded to the applicant.

(d) Each exemption certificate issued shall be on a form prescribed by the Industry Committee and shall be signed by the Secretary or Assistant Secretary of the committee. It shall specify the defects for which exemption is granted and the period during which the exemption certificate shall be effective. Each exemption certificate shall be effective only for the defects specified therein. It shall be issued in quadruplicate; and one copy shall be delivered to the grower, one copy shall be delivered to the shipper designated by the grower to receive a copy, one copy shall be delivered to the field representative of the Industry Committee, and one copy shall be retained by the Industry Committee.

(e) The committee may, at any time, cancel or modify an exemption certificate if it is determined that the need for such exemption no longer exists or that a different quantity of the restricted or prohibited grades and sizes than that provided by such exemption certificate will permit the applicant to ship the requisite percentage of his crop.

(f) Each shipper handling Tokay grapes pursuant to an exemption certificate shall keep an accurate record of all shipments, made pursuant to the certificate, in the appropriate blank spaces provided for therein. Such record shall include with respect to each shipment, the date, the number of the railroad car or license number of the truck in which such shipment is made, the name of the shipper, the shipping point, the consignment number, and the quantity of each size and grade of Tokay grapes in such shipment. When the quantity of grapes authorized by the exemption certificate has been shipped or shipments pursuant to an exemption certificate have been completed, the exemption certificate containing the record of shipments shall be submitted promptly to the Industry Committee or its duly authorized representative.

VOLUME REGULATION

§ 926.130 Application for allotment.

Each person who proposes to ship grapes as the first handler thereof during any period in which grapes may be regulated pursuant to § 926.61 shall submit to the Industry Committee, on forms prescribed and furnished by such committee, a written application for allotment. Such application shall be submitted on such dates as the Industry Committee may from time to time designate, shall contain the information prescribed in § 926.63(a), and, in addition, shall contain a certification to the United States Department of Agriculture and the Industry Committee as to the truthfulness of the information contained therein.

§ 926.131 Adjustment to correct errors, omissions, or inaccuracies.

Whenever the Industry Committee determines that an error, omission, or inaccuracy has resulted in a handler receiving more or less allotment than that to which he was entitled, the allotments of such handler shall thereafter be adjusted during a maximum period of four consecutive allotment periods (or the balance of the then current season if less than four allotment periods): *Provided*, That, insofar as possible, the amount of adjustment for any allotment period shall not exceed one-half of the total allotment issued to such handler for such period, and, where necessary to comply with this limitation, the maximum period may be extended. Such adjustments shall be made only during the season in which the errors, omissions, or inaccuracies occurred.

§ 926.132 Certificate of allotment.

Two days prior to each allotment period, Certificates of Allotment for such period shall be mailed to each handler entitled to an allotment. Not later than the end of the second day of such allotment period, a Certificate of Revised Allotment shall be mailed to handlers. Each Certificate of Allotment shall contain: (a) The date of issuance (b) the name and address of the handler to whom issued, (c) the al-

lotment period to which applicable, (d) the total allotment issued to such handler pursuant to §§ 926.62(a) and 926.65. In addition to the foregoing information, each Certificate of Revised Allotment shall show adjustments by reasons of prior undershipments, overshipments, and repayment of loans.

§ 926.133 Transfers from one handler to another.

Any person gaining the right to ship grapes from a vineyard by reason of a grower's transfer of his grapes to such person may submit an application to the Industry Committee on such form as it shall prescribe for an increase in his allotment percentage. Such application shall contain: (a) The date of application, (b) the name and address of the applicant, (c) the name and address of the grower, (d) the name and location of the vineyard involved, (e) the date such transfer became effective, (f) the record of shipments of Tokay grapes from such vineyard during the two previous seasons, and (g) a verification of the transfer signed by the person losing the right to ship such grapes or by the grower. In the event the verification is signed by the grower, the application must also contain a certification by such grower to the United States Department of Agriculture and to the Industry Committee that he had the right to make such transfer.

§ 926.134 Undershipments.

Whenever a handler has allotment available by reason of a prior undershipment of allotment, the portion of such undershipment which he may use shall not exceed 10 percent of the total allotment issued to him for the period in which the undershipment occurred, or the equivalent of 1,105 standard packages of grapes, whichever is the greater.

Safeguards With Respect to Shipments Within the Production Area and Shipments by Truck

§ 926.150 Shipments within area of production.

With respect to each shipment of grapes to a destination within the production area, each handler shall first obtain from the purchaser a certification, on such form as is prescribed by the Industry Committee, to the United States Department of Agriculture and the Industry Committee that such grapes are for delivery to a destination within the production area and will not be shipped from the production area. Such certificate shall state the date of shipment, the quantity of grapes included in the shipment, the truck license number or other identification of the carrier of the grapes, and the signature and address of the purchaser, or his agent. The certificate shall also be signed by the handler and shall be forwarded to the Industry Committee within 48 hours after the time of the shipment.

§ 926.151 Assignment of allotment certificates.

Assignment of allotment certificates shall be issued in triplicate by the handler on the form prescribed by the Industry Committee. The original shall be mailed to the Industry Committee at time of issuance; the duplicate shall accompany the shipment at all times until it arrives at destination; and the triplicate shall be retained by the handler issuing the certificate for at least two succeeding years.

§ 926.160 Reports.

Each handler of Tokay grapes shall furnish, or shall authorize any or all railroad, transportation, or cold storage agencies to furnish, daily to the Industry Committee, during such periods as shall be required by it, the following information:

(a) A report of all grapes packed by or for such handler. Such report shall show separately for each vineyard for which adjusted allotment has been issued, the name of the grower and the quantity of grapes packed.

(b) A report of all shipments, including the origin of the shipment, the date of billing, the destination, any diversion orders issued on such shipment, the name and address of any refrigerated storage warehouse within the State of California to which the shipment is consigned either in transit or otherwise, the car or truck license number, the number of standard pack-

ages of grapes or the billing weight thereof. Such report shall include all shipments from refrigerated storage warehouses within the State of California.

(c) The grade of all grapes shipped.

(d) In addition to all other information required to be supplied by said handler as set forth in this section, each handler who ships grapes for which an exemption certificate is required under the provision of § 926.51 shall furnish to the confidential employees of the Industry Committee complete daily information with respect to each such shipment as follows:

(1) The name of the grower for whom such grapes were shipped;

(2) The grade and size of such grapes; and

(3) The number of the exemption certificate under which such grapes were shipped.

Shipments Not Subject to Regulation

§ 926.170 Grapes not subject to regulation.

(a) *Grapes for charitable purposes.* Any person who ships Tokay grapes for consumption by charitable institutions or for distribution by relief agencies or for relief purposes shall first deliver to the Industry Committee or its designated agent evidence satisfactory to the committee or its designated agent that said grapes actually will be used for one or more of the aforesaid purposes.

(b) *Grapes for conversion into by-products, including wine and juice.* Each handler who ships grapes to any point outside the State of California, or to any point within the State of California in any container containing less than 200 pounds of grapes, for commercial conversion into by-products, wine, or juice shall first obtain, and furnish to the Industry Committee, a certification to the United States Department of Agriculture and to the Industry Committee, executed by the purchaser of such grapes, that the grapes will be used for by-products, wine, or juice purposes.

(c) *Shipments by types or in minimum quantities.* Nothing contained in this subpart shall in any way restrict or limit (1) shipments of grapes to any one person during any calendar day in quantities of five standard packages or less, or the equivalent thereof, for purposes other than resale, and (2) shipments of grapes which are donated for trade promotion purposes and which are not to be sold.

§ 926.180 Nomination for position as seventh member of committee.

The six alternates nominated at grower meetings provided for in § 926.22(a) are eligible to be nominated for the position of member at large.

§ 926.190 Election procedure for Shippers' Advisory Committee.

The Industry Committee shall conduct the election meeting of the Shippers' Advisory Committee. The election of members and alternate members of the Shippers' Advisory Committee shall proceed in the following order:

(a) Three members shall be elected by and from among, the five largest handlers, or employees, or representatives of such handlers.

(b) Three members shall be elected by all other handlers during the same period the five largest handlers are making their selections.

(c) The six elected members of the Shippers' Advisory Committee and the Industry Committee will elect the member at large.

(d) Three alternate members shall be elected by the five largest handlers.

(e) Three alternates shall be elected by the remaining handlers.

(f) The first six elected members of the Shippers' Advisory Committee and the Industry Committee will elect the alternate to the member at large.

§ 926.191 Determination of handler volume.

The basis for the quantity of grapes shipped by each respective handler during the preceding season pursuant to § 926.40 shall be the total number of lugs, or equivalent thereof, reported for the preceding season by such handlers on manifests to the Industry Committee and on which each shipper paid the assessment.

NOTE: After January 1, 1979, "Budget of Expenses and Rate of Assessment" regulations (e.g. sections .200 through .299) and "Handling" regulations (e.g. sections .300 through .399) which are in effect for a year or less, will not be carried in the Code of Federal Regulations. For FEDERAL REGISTER citations affecting these regulations, see the "List of CFR Sections Affected" in this volume.

PART 927—BEURRE D'ANJOU, BEURRE BOSC, WINTER NELIS, DOYENNE DU COMICE, BEURRE EASTER, AND BEURRE CLAIRGEAU VARIETIES OF PEARS GROWN IN OREGON, WASHINGTON, AND CALIFORNIA

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AUTHORITY: Secs. 1-19, 48 Stat. 31, as amended; 7 U.S.C. 601-674.

Subpart—Order Regulating Handling

SOURCE: 15 FR 6071, Sept. 9, 1950, unless otherwise noted. Redesignated at 26 FR 12751, Dec. 30, 1961.

DEFINITIONS

§ 927.1 Secretary

"Secretary" means the Secretary of Agriculture of the United States.

§ 927.2 Act.

"Act" means Public Act No. 10, 73d Congress (May 12, 1933), as amended and as reenacted and amended by the Agricultural Marketing Agreement Act of 1937, as amended (48 Stat. 31, as amended; 7 U.S.C. 601 et seq.).

§ 927.3 Person.

"Person" means an individual partnership, corporation, association, legal representative, or any organized groups of individuals.

§ 927.4 Pears.

"Pears" means and includes any and all of the Beurre D'Anjou, Beurre, Bosc, Winter Nelis, Doyenne du Comice, Beurre Easter, and Beurre Clairgeau varieties of pears grown in the States of Oregon, Washington, and California.

§ 927.5 Size.

"Size" means the number of pears which can be packed in a standard western pear box 18" long, 11½" wide and 8½" deep (inside measurements) when packed in accordance with the packing requirements of the U.S. Standards for Pears (Part 51 of this title), or as such standards hereafter may be modified or as "size" may be more specifically defined in a regulation issued under this part.

§ 927.6 Grower.

"Grower" means any person engaged in the production of pears, either as owner or as tenant.

§ 927.7 Handler.

"Handler" means any person (except a common carrier of pears owned by another person) who, as owner, agent, broker, or otherwise, ships or handles pears, or causes pears to be shipped or handled, in fresh form by rail, truck, boat, or any other means whatsoever.

§ 927.8 Ship or handle.

"To ship" or "to handle" means to sell, deliver, handle for shipment, transport, or offer for transportation pears in the current of commerce, or so as directly to burden, obstruct, or affect commerce, from the State of Oregon, the State of Washington, or the State of California to any point outside thereof.

§ 927.9 Fiscal period.

"Fiscal period" means the period beginning July 1 of any year and ending June 30 of the following year.

§ 927.10 Area.

"Area" means and includes the States of Oregon, Washington, and California.

§ 927.11 District.

"District" means the applicable one of the following-described subdivisions of the area covered by the provisions of this subpart:

(a) Medford District shall include the counties of Jackson, Josephine, Curry, Coos, Douglas, Lane, and Klamath in the State of Oregon.

(b) Hood River-White Salmon-Underwood District shall include all of the State of Oregon not included in the Medford District, and the counties of Skamania and Klickitat in the State of Washington.

(c) Wenatchee District shall include the counties of Chelan, Okanogan, Douglas, and Spokane in the State of Washington.

(d) Yakima District shall include all of the State of Washington, not included in the Wenatchee District or in the Hood River-White Salmon-Underwood District.

(e) Placerville District shall include all counties north of the northern boundaries of San Francisco, Contra Costa, San Joaquin, Calaveras, and

Alpine Counties in the State of California.

(f) Santa Clara District shall include all of the State of California not included in the Placerville District.

§ 927.12 Export market.

"Export market" means any destination which is not within the 48 states, or the District of Columbia, of the United States.

CONTROL COMMITTEE

§ 927.20 Establishment.

A Control Committee, consisting of 12 individual persons as its members, is hereby established to administer the terms and provisions of this subpart as specifically provided in §§ 927.20 to 927.35. There shall be two alternates, designated as the "first alternate" and the "second alternate," respectively, for each member of the committee. Six members of the Control Committee and their respective alternates shall be growers of pears, and six members and their respective alternates shall be handlers of pears. Each district shall be represented on the committee by one grower member and one handler member.

§ 927.21 Nomination and selection of members and their respective alternates.

The grower members and their respective alternates for each district shall be selected by the Secretary from nominees elected by the growers in such district, and the handler members and their respective alternates for each district shall be selected by the Secretary from nominees elected by the handlers in such district.

§ 927.22 Meetings for election of nominees.

Nominations for members of the Control Committee and their alternates shall be made at meetings of growers and handlers held in each of the districts designated in § 927.11 at such times and places as the Control Committee shall designate. At each of such meetings the growers or handlers eligible to participate therein shall select a chairman and a secretary of that meeting. In the election of nominees, each grower and each handler shall be entitled to vote in accordance with the provisions of § 927.23. The chairman of the meeting shall announce at the meeting the name of each person for whom votes have been cast, whether as a member or as an alternate for a member, and the number of votes cast for each such person; and the chairman or the secretary of such meeting shall forthwith transmit such information to the Secretary or his designated representative.

§ 927.23 Voting.

Only growers in attendance at meetings for election of nominees shall participate in the nomination of grower members and their alternates, and only handlers in attendance at meetings for election of nominees shall participate in the nomination of handler members and their alternates. A grower may participate only in the election held in the district in which he produces pears, and a handler may participate only in the election held in the district or districts in which he handles pears. No person may vote both as a handler and as a grower. Each grower and each handler shall be entitled to cast one vote, on behalf of himself, his agents, partners, affiliates, subsidiaries, and representatives, for each nominee to be elected.

§ 927.24 Eligibility for membership.

Each grower member and each of his alternates shall be a grower who grows pears in the district in which and for which he is nominated and selected. Each handler member and each of his alternates shall be a handler, or an officer or employee of a handler, handling pears in the district in and for which he is nominated and selected.

§ 927.25 Failure to nominate.

In the event nominations are not made pursuant to §§ 927.21 and 927.22 on or before June 1 of any year, the Secretary may select members and alternates for members without regard to nominations.

§ 927.26 Qualifications.

Any person selected by the Secretary as a member or as an alternate

for a member of the Control Committee shall qualify by filing a written acceptance with the Secretary within 15 days after being notified of such selection.

§ 927.27 Term of office.

Each member and each alternate for a member shall serve during the fiscal period for which he has been selected or until his successor is selected and has qualified.

§ 927.28 Alternates for members of the Control Committee.

The first alternate for a member shall act in the place and stead of the member for whom he is an alternate during such member's absence. In the event of the death, removal, resignation, or disqualification of a member, his first alternate shall act as a member until a successor for the member is selected and has qualified. The second alternate for a member shall serve in the place and stead of the member for whom he is an alternate whenever both the member and his first alternate are unable to serve.

§ 927.29 Vacancies.

To fill any vacancy occasioned by the failure of any person selected as a member or as an alternate for a member of the Control Committee to qualify, or in the event of death, removal, resignation, or disqualification of any qualified member or qualified alternate for a member, a successor for his unexpired term shall be nominated and selected in the manner set forth in §§ 927.20 to 927.35. If nominations to fill any such vacancy are not made within 20 days after such vacancy occurs, the Secretary may fill such vacancy without regard to nominations.

§ 927.30 Compensation and expenses.

The members and alternates for members of the Control Committee shall serve without compensation, but may be reimbursed for expenses necessarily incurred by them in the performance of their respective duties.

§ 927.31 Powers of Control Committee.

The Control Committee shall have the following powers:

(a) To administer, as specifically provided in §§ 927.20 to 927.35, the terms and provisions of this subpart;

(b) To make administrative rules and regulations in accordance with, and to effectuate, the terms and provisions of this subpart; and

(c) To receive, investigate, and report to the Secretary complaints of violations of the provisions of this subpart.

§ 927.32 Duties of Control Committee.

The duties of the Control Committee shall be as follows:

(a) To act as intermediary between the Secretary and any grower or handler;

(b) To keep minutes, books, and records which will reflect clearly all of the acts and transactions of the Control Committee, which minutes, books, and records shall be subject at any time to examination by the Secretary or by such person as may be designated by the Secretary;

(c) To investigate, from time to time, and to assemble data on the growing, harvesting, shipping, and marketing conditions relative to pears, and to furnish to the Secretary such available information as may be requested;

(d) To perform such duties as may be assigned to it from time to time by the Secretary in connection with the administration of section 32 of the act to amend the Agricultural Adjustment Act, and for other purposes, Public Act No. 320, 74th Congress, approved August 24, 1935 (49 Stat. 774), as amended;

(e) To cause the books of the Control Committee to be audited by one or more competent accountants at the end of each fiscal year and at such other times as the Control Committee may deem necessary or as the Secretary may request, and to file with the Secretary copies of any and all audit reports made;

(f) To appoint such employees as it may deem necessary, and to determine the salaries and define the duties of such employees;

(g) To give the Secretary, or the designated agent of the Secretary, the same notice of meetings of the Control

Committee as is given to the members of the Control Committee;

(h) To select a chairman of the Control Committee and, from time to time, such other officers as it may deem advisable; and

(i) To submit to the Secretary each fiscal period a budget of its expenses during that fiscal year.

[15 FR 6071, Sept. 9, 1950. Redesignated at 26 FR 12751, Dec. 30, 1961, and as amended at 27 FR 93, Jan. 5, 1962]

§ 927.33 Procedure of Control Committee.

(a) *Quorum and voting.* A quorum shall consist of nine members, or alternates then serving in the place and stead of any members, in attendance at the meeting. Except as otherwise provided in § 927.52, all decisions of the Control Committee shall be made by not fewer than seven affirmative votes.

(b) *Mail voting.* The Control Committee may provide for members voting by mail, telephone, or telegraph, upon due notice to all members. Promptly after voting by telephone or telegraph, each member thus voting shall confirm in writing, the vote so cast.

§ 927.34 Rights of the Secretary.

The members and alternates for members of the Control Committee and any agent or employee appointed or employed by the Control Committee shall be subject to removal or suspension by the Secretary at any time. Each and every regulation, decision, determination, or other act of the Control Committee shall be subject to the continuing right of the Secretary to disapprove of the same at any time, and, upon such disapproval, shall be deemed null and void, except as to acts done in reliance thereon or in compliance therewith prior to such disapproval by the Secretary.

§ 927.35 Funds and other property.

(a) All funds received by the Control Committee pursuant to any of the provisions of this subpart shall be used solely for the purposes specified in this subpart, and the Secretary may require the Control Committee and its members to account for all receipts and disbursements.

(b) Upon the death, resignation, removal, disqualification, or expiration of the term of office of any member or employee of the Control Committee, all books, records, funds, and other property in his possession belonging to the Control Committee shall be delivered to his successor in office or to the Control Committee, and such assignments and other instruments shall be executed as may be necessary to vest in such successor or in the Control Committee full title to all the books, records, funds, and other property in the possession or under the control of such member or employee pursuant to this subpart.

Expenses and Assessments

§ 927.40 Expenses.

The Control Committee is authorized to incur such expenses as the Secretary finds may be necessary to carry out its functions under this subpart. The funds to cover such expenses shall be acquired by the levying of assessments as provided in § 927.41.

§ 927.41 Assessments.

Assessments will be levied only upon the handler who first handles pears which subsequently are shipped from the State of Oregon, the State of Washington, or the State of California. Such handler shall pay to the Control Committee, upon demand, such handler's pro rata share of the expenses which the Secretary finds necessarily will be incurred by the Control Committee for the maintenance and functioning of the Control Committee during each fiscal period. Such handler's pro rata share of such expenses shall be that proportion thereof which the total quantity of pears first handled by that handler during such fiscal period is of the total quantity of pears first handled by all handlers during that fiscal period. The Secretary shall fix the rate of assessment to be paid by such handler, which rate may be adjusted from time to time by the Control Committee, with the approval of the Secretary, in order to cover any later findings by the Secretary of estimated expenses or the actual expenses of the Control Committee during said fiscal period.

§ 927.42 Accounting.

(a) If, at the end of a fiscal period, the assessments collected are in excess of expenses incurred, the committee, with the approval of the Secretary, may carryover such excess into subsequent fiscal periods as a reserve: *Provided,* That funds already in the reserve do not exceed approximately one fiscal period's expenses. Such reserve may be used (1) to cover any expense authorized under this part and (2) to cover necessary expenses of liquidation in the event of termination of this part. Any such excess not retained in a reserve or applied to any outstanding obligation of the person from whom it was collected shall be refunded proportionately to the persons from whom it was collected. Upon termination of this part, any funds not required to defray the necessary expenses of liquidation shall be disposed of in such manner as the Secretary may determine to be appropriate: *Provided,* That to the extent practical, such funds shall be returned pro rata to the persons from whom such funds were collected.

(b) All funds received by the committee pursuant to the provisions of this part shall be used solely for the purpose specified in this part and shall be accounted for in the manner provided in this part. The Secretary may at any time require the committee and its members to account for all receipts and disbursements.

[27 FR 93, Jan. 5, 1962]

§ 927.43 Use of funds.

From the funds acquired pursuant to § 927.41 the Control Committee shall pay the salaries of its employees, if any, and pay the expenses necessarily incurred in the performance of the duties of the Control Committee.

§ 927.44 Collection of unpaid assessments.

The Control Committee, with the approval of the Secretary, may institute and maintain, in its own name or in the names of its members, legal proceedings against any handler assessed for the collection of such handler's pro rata share of the aforesaid expenses.

RESEARCH AND DEVELOPMENT

§ 927.47 Research and development.

The Control Committee, with the approval of the Secretary, may establish or provide for the establishment of production research or marketing research and development projects designed to assist, improve, or promote the marketing, distribution, and consumption of pears. Such projects may provide for any form of marketing promotion, including paid advertising. The expense of such projects shall be paid from funds collected pursuant to § 927.41.

[49 FR 43450, Oct. 29, 1984]

REGULATION OF SHIPMENTS

§ 927.50 Recommendation by the Control Committee.

(a) It shall be the duty of the Control Committee to investigate, from time to time, supply and demand conditions relative to pears and each grade, size, and quality of each variety thereof. Such investigations by the Control Committee shall be with respect to the following: (1) Estimated production of each variety of pears and of each grade, size, and quality thereof; (2) prospective supplies and prices of Bartlett pears and other fruits, both in fresh and processed form, which are competitive to the marketing of pears; (3) prospective exports of pears and imports of pears from other producing areas; (4) probable harvesting period for each variety of pears; (5) the trend and level of consumer income; (6) general economic conditions; and (7) other relevant factors.

(b) On or before August 1 of each year, the Control Committee shall recommend regulations to the Secretary if it finds, on the basis of the foregoing investigations, that such regulation as is provided in § 927.51 will tend to effectuate the declared policy of the act.

(c) In the event the Control Committee at any time finds that by reason of changed conditions any regulation issued pursuant to § 927.51 should be modified, suspended, or terminated, it shall so recommend to the Secretary.

§ 927.51 Issuance of regulations; and modification, suspension, or termination thereof.

(a) Whenever the Secretary finds, from the recommendations and information submitted by the Control Committee, or from other available information, that regulation, in the manner specified in this section, of the shipment of pears would tend to effectuate the declared policy of the act, he shall so limit the shipment of pears during a specified period or periods. Such regulation: (1) May limit the total quantity of any grade, size, quality, or combinations thereof, of any variety of pears grown in any district and may prescribe different requirements applicable to shipments to different export markets; or (2) may prescribe minimum standards of quality for any variety of pears and limit the shipment thereof to those meeting such minimum standards.

(b) Whenever the Secretary finds, from the recommendations and information submitted by the Control Committee, or from other available information, that a regulation should be modified, suspended, or terminated with respect to any or all shipments of pears grown in any district in order to effectuate the declared policy of the act, he shall so modify, suspend, or terminate such regulation. If the Secretary finds, from the recommendations and information submitted by the Control Committee, or from other available information, that a regulation obstructs or does not tend to effectuate the declared policy of the act, he shall suspend or terminate such regulation. On the same basis and in like manner the Secretary may terminate such modification or suspension.

§ 927.52 Prerequisites to committee recommendations.

(a) Decisions of the Control Committee with respect to any recommendation to the Secretary pursuant to the provisions of § 927.50 shall be made by an affirmative vote of not less than 80 percent of the applicable total number of votes, computed in the manner hereinafter prescribed in this section, of all committee members.

(b) With respect to a particular variety of pears, the applicable total number of votes shall be the aggregate of the votes allotted to the members of the committee in accordance with the following: Each member shall have one vote as an individual and, in addition, shall have an equal share of the vote of the district represented by such member; and such district vote shall be computed by the Control Committee as soon as practical after the beginning of each fiscal period on the basis of one vote for each 25,000 boxes of the average quantity (rounded to the nearest 25,000 boxes) of such variety produced in the particular district and shipped therefrom during the immediately preceding three fiscal periods to destinations outside the State in which produced. The votes so allotted to a member of the committee may be cast by such member on each recommendation relative to the variety of pears on which such votes were computed.

§ 927.53 Notification.

(a) The Control Committee shall give prompt notice to growers and handlers of each recommendation to the Secretary pursuant to the provisions of § 927.50.

(b) The Secretary shall immediately notify the Control Committee of the issuance of each regulation and of each modification, suspension, or termination of a regulation and the Control Committee shall give prompt notice thereof to growers and handlers.

§ 927.54 Exemption certificates.

(a) As soon as practicable after the beginning of each fiscal period the Control Committee shall adopt and announce the procedural rules by which exemption certificates may be issued to growers. The Control Committee shall determine the percentage which the grades and sizes of each variety of pears permitted to be shipped from each district under the regulation bears to the total quantity of each variety of pears which could be shipped from that district in the absence of regulation. An exemption certificate may thereafter be granted to any grower who furnishes proof that he will be prevented, because of the

regulation in effect, from shipping a percentage of a particular variety of his pears equal to the percentage of pears of that particular variety permitted to be shipped from his district as determined by the Control Committee. Such exemption certificate shall permit the growers to ship that quantity of the particular variety of pears of the regulated grades and sizes of such variety as will enable him to ship as large a percentage of such variety of his pears as the average percentage of that particular variety of pears that is permitted to be shipped by all growers in his district.

(b) In the event the Control Committee shall determine and report to the Secretary that, by reason of general crop failure or other extraordinary conditions within a particular district, it is not feasible and would not be equitable to issue exemption certificates to growers within that district on the basis of the average percentage of the pears grown in the district which may be shipped in compliance with the requirements of § 927.51, the Secretary may prescribe such other basis for the issuance of such certificates to growers within that district as he may find to be feasible, equitable, and proper.

(c) The Secretary shall have power to modify, change, alter, or amend any procedural rules and any exemption granted under this section.

Inspection

§ 927.60 Inspection and certification.

(a) Except as hereinafter provided no handler shall ship any pears not theretofore inspected, and a certificate issued with respect thereto, by a duly authorized representative of the Federal-State Inspection Service: *Provided,* That such inspection and certification of shipments of pears may be performed by such other inspection service as the Control Committee, with the approval of the Secretary, may designate. Promptly after shipment of any pears, the handler shall submit, or cause to be submitted, to the Control Committee a copy of the inspection certificate issued on such shipment.

(b) Any handler may ship pears, on any one conveyance and in such quantity as the committee, with the approval of the Secretary, may prescribe, exempt from the inspection and certification requirements of paragraph (a) of this section.

[15 FR 6071, Sept. 9, 1950. Redesignated at 26 FR 12751, Dec. 30, 1961, and amended at 27 FR 93, Jan. 5, 1962]

Exceptions

§ 927.65 Exemption from regulation.

(a) Nothing contained in this subpart shall limit or authorize the limitation of shipment of pears for consumption by charitable institutions or distribution by relief agencies or conversion into by-products, nor shall any assessment be computed on pears so shipped. The Control Committee may prescribe regulations to prevent pears shipped for either of such purposes from entering commercial fresh-fruit channels of trade contrary to the provisions of this subpart.

(b) The Control Committee shall prescribe rules and regulations, to become effective upon the approval of the Secretary, whereby shipments of pears in individual gift packages may be exempted from the provisions of this subpart.

(c) The Control Committee may, with the approval of the Secretary, designate storage warehouses within the area and prescribe rules and regulations whereby pears may be shipped to such storage warehouses exempt from the provisions of this subpart: *Provided,* That pears so shipped shall not thereafter be handled contrary to the provisions of this subpart.

Miscellaneous Provisions

§ 927.70 Reports.

Upon the request of the Control Committee, subject to the disapproval of the Secretary, each handler shall furnish to the Control Committee, in such manner and at such times as it prescribes, such information as will enable it to perform its duties under this subpart.

§ 927.71 Compliance.

Except as provided in § 927.65, no handler shall ship any pears contrary to the applicable restrictions and limi-

tations specified in, or effective pursuant to, the provisions of this subpart.

§ 927.72 Duration of immunities.

The benefits, privileges, and immunities conferred by virtue of this subpart shall cease upon termination hereof, except with respect to acts done under and during the existence of this subpart.

§ 927.73 Separability.

If any provision of this subpart is declared invalid, or the applicability thereof to any person, circumstance, or thing is held invalid, the validity of the remaining provisions and the applicability thereof to any other person, circumstance, or thing shall not be affected thereby.

§ 927.74 Derogation.

Nothing contained in this subpart is or shall be construed to be in derogation of, or in modification of, the rights of the Secretary or of the United States to exercise any powers granted by the act or otherwise, or, in accordance with such powers, to act in the premises whenever such action is deemed advisable.

§ 927.75 Liability of Control Committee members.

No member or alternate for a member of the Control Committee, nor any employee or agent thereof, shall be held personally responsible, either individually or jointly with others, in any way whatsoever, to any party under this subpart or to any other person for errors in judgment, mistakes, or other acts, either of commission or omission, as such member, alternate for a member, or employee, except for acts of dishonesty.

§ 927.76 Agents.

The Secretary may name, by designation in writing, any person, including any officer or employee of the Government or any bureau or division in the Department of Agriculture to act as his agent or representative in connection with any of the provisions of this subpart.

§ 927.77 Effective time.

The provisions of this subpart shall become effective August 26, 1939, and shall continue in force until terminated in one of the ways specified in § 927.78.

§ 927.78 Termination.

(a) The Secretary may at any time terminate this subpart.

(b) The Secretary shall terminate or suspend the operation of any or all of the provisions of this subpart whenever he finds that such operation obstructs or does not tend to effectuate the declared policy of the act.

(c) The Secretary shall terminate the provisions of this subpart at the end of any fiscal period whenever he finds that such termination is favored by a majority of the growers of pears who, during such fiscal period, have been engaged in the area in the production of pears for market: *Provided*, That such majority have produced for market during such period more than 50 percent of the volume of pears produced for market in the area; but such termination shall be effective only if announced on or before June 30 of that fiscal period.

(d) The provisions of this subpart shall terminate, in any event, whenever the provisions of the act authorizing the same cease to be in effect.

§ 927.79 Proceedings after termination.

(a) Upon the termination of this subpart, the members of the Control Committee then functioning shall continue as joint trustees for the purpose of liquidating all funds and property then in the possession or under the control of the Control Committee, including claims for any funds unpaid or property not delivered at the time of such termination.

(b) The joint trustees shall continue in such capacity until discharged by the Secretary; from time to time account for all receipts and disbursements; deliver all funds and property on hand, together with all books and records of the Control Committee and of the joint trustees, to such person as the Secretary shall direct; and, upon the request of the Secretary, execute such assignments or other instruments

necessary and appropriate to vest in such person full title to all of the funds or claims vested in the Control Committee or in said joint trustees.

(c) Any funds collected pursuant to this subpart and held by such joint trustees or such person over and above the amounts necessary to meet outstanding obligations and the expenses necessarily incurred by the joint trustees or such other person in the performance of their duties under this subpart, as soon as practicable after the termination hereof, shall be returned to the handlers pro rata in proportion to their contributions thereto.

(d) Any person to whom funds, property, or claims have been delivered by the Control Committee or its members, upon direction of the Secretary, as provided in this section, shall be subject to the same obligations and duties with respect to said funds, property, or claims as are imposed upon the members of said Committee or upon said joint trustees.

§ 927.80 Amendments.

Amendments to this subpart may be proposed from time to time by the Control Committee or by the Secretary.

§ 927.81 Effect of termination or amendment.

Unless otherwise expressly provided by the Secretary, the termination of this subpart or of any regulation issued pursuant to this subpart or the issuance of any amendment to either, shall not (a) affect or waive any right, duty, obligation, or liability which shall have arisen or which may thereafter arise in connection with any provision of this subpart or any regulation issued hereunder, or (b) release or extinguish any violation of this subpart or of any regulation issued hereunder, or (c) affect or impair any rights or remedies of the Secretary or of any other person with respect to any such violation.

Subpart—Control Committee Rules and Regulations

SOURCE: 16 FR 10926, Oct. 27, 1951, unless otherwise noted. Redesignated at 26 FR 12751, Dec. 30, 1961.

DEFINITIONS

§ 927.100 Terms.

Each term used in this subpart shall have the same meaning as when used in the marketing agreement and order.

§ 927.101 Marketing agreement.

"Marketing agreement" means Marketing Agreement No. 89, as amended, regulating the handling of Beurre D'Anjou, Beurre Bosc, Winter Nelis, Doyenne du Comice, Beurre Easter, and Beurre Clairgeau varieties of pears grown in the States of Oregon, Washington, and California.

§ 927.102 Order.

"Order" means Order No. 927, as amended (§§ 927.1 to 927.81), regulating the handling of Beurre D'Anjou, Beurre Bosc, Winter Nelis, Doyenne du Comice, Beurre Easter, and Beurre Clairgeau varieties of pears grown in the States of Oregon, Washington, and California.

COMMUNICATIONS

§ 927.105 Communications.

Unless otherwise prescribed in this subpart, or in the marketing agreement and order, or required by the Control Committee, all reports, applications, submittals, requests, inspection certificates, and communications in connection with the marketing agreement and order shall be forwarded to:

Winter Pear Control Committee
601 Woodlark Building
Portland, Oregon 97205

[40 FR 42851, Sept. 17, 1975]

EXEMPTION CERTIFICATES

§ 927.110 Determination of district percentages.

(a) The Control Committee, at its meeting held on or before August 1 of each year for the purpose of making recommendations to the Secretary under the provisions of § 927.50, shall estimate the district percentages which the grades and sizes of each variety of pears permitted to be shipped from each district under the recommended regulation bears to the total

quantity of each variety of pears which could be shipped from that district in the absence of regulation.

(b) Any notice issued or given pursuant to this estimate shall specifically state that each of the said percentages is merely an estimate subject to change, and is not to be relied upon until final action is taken as hereinafter provided. Each exemption committee, as hereinafter constituted in each district, shall meet and elect a district chairman and a secretary, either at or within ten days following said meeting of the Control Committee. Said district chairman shall immediately notify the secretary of the Control Committee of the names of the chairman and the secretary. The chairman of each exemption committee shall call a meeting of such committee within his district not later than a date to be determined each year by the Control Committee at the meeting specified in paragraph (a) of this section.

(c) At said district meeting, the district percentage estimates made by the Control Committee shall be reviewed by the exemption committee, and, if found to be not in accordance with conditions then existing within the district, said committee shall recommend proper adjustments to the Control Committee. Each exemption committee shall make only one recommendation for adjustment of district percentages in any one season, and said recommendation shall be made not later than the date specified by the Control Committee, except that should a major change occur in the crop or crops in any district after such date, the exemption committee may recommend a further change in such percentages. On the basis of the information submitted to it by the exemption committees and such other information and evidence as is available to it, the Control Committee shall establish all district percentages to be used in computing exemptions to growers. In the event no adjustment is recommended by the exemption committees by the date above specified, the Control Committee shall immediately, on the basis of information and evidence available to it, establish the district percentages to be used in computing exemptions to growers.

(d) The Control Committee shall give prompt notice to growers and handlers of the final percentages to be used in computing exemptions to growers.

(e) Any action taken by an exemption committee shall be approved by four affirmative votes, and each such committee shall keep accurate minutes and records of the proceedings of each of its meetings. A copy of such minutes and records shall be forwarded to the secretary of the Control Committee promptly after each meeting.

[17 FR 11629, Dec. 20, 1952. Redesignated at 26 FR 12751, Dec. 30, 1961]

§ 927.110a Application for exemption certification.

Each application for an exemption certificate authorizing the shipment (pursuant to § 927.54) during a particular marketing season of any variety of pears shall be filed with the Secretary of the Control Committee. At the same time, and in order to insure prompt handling of such application, the applicant shall mail or deliver a copy of the application to the chairman of the exemption committee in the district in which the pears are grown. The application should be filed at the time the pears are harvested, and must be filed prior to the time the applicant's crop is graded, sized, and packed. Each application duly mailed and received by the Secretary of the Control Committee shall be deemed to have been filed with the Secretary as of the date of such mailing. As a part, and in support, of the application for an exemption certificate, the applicant shall submit one or more inspection certificates (or copies thereof) issued by a duly authorized representative of the Federal-State Inspection Service indicating the percentage of such applicant's production of all pears of such variety which will meet the grade, size, and quality regulations in effect and the percentage which will not meet these regulations; and the volume of pears so inspected shall be representative of such applicant's total production of such variety. The said exemption committee shall have

the right to make or cause to be made such additional investigation as may be necessary to determine whether the portion of the applicant's production covered by the inspection certificates adequately represents the applicant's total production of such variety. The cost of such inspection shall be borne by the applicant. The application to be submitted shall be "Form E-1 Growers Application for Exemption Certificate" and shall contain the following information:

(a) The name and address of the applicant;

(b) The location of the orchard (by district and distance from the nearest town) from which the fruit is to be shipped pursuant to the exemption certificate;

(c) The number and age of the trees producing the particular variety for which exemption is requested;

(d) The estimated quantity of such variety which could be shipped by the applicant in the absence of the grade, size, or quality regulations in effect at the time the application is filed;

(e) The percentage of such variety, as set forth in the attached Federal-State inspection certificate or the weighted average of such percentages if there is more than one inspection certificate, which meets the requirements of the aforesaid effective grade, size, or quality regulations;

(f) The quantity of such variety which meets the requirements of the aforesaid effective grade, size, or quality regulations (such quantity shall be determined by applying the applicable percentage prescribed in paragraph (e) of this section to be the estimated quantity pursuant to paragraph (d) of this section);

(g) The total crop of such variety and the quantity shipped during the preceding marketing season;

(h) The names of the shippers who shipped all or any portion of the applicant's aforesaid crop during the preceding marketing season;

(i) The reasons why the quantity of the particular variety of pears, for which exemption is requested, does not meet the aforesaid effective grade, size, or quality regulations; and

(j) The name of the shipper or shippers who will ship the exempted pears if the exemption certificate is issued.

[20 FR 7029, Sept. 20, 1955. Redesignated at 26 FR 12751, Dec. 30, 1961]

§ 927.111 Exemption committee.

The members and alternate members of the Control Committee residing in the district in which the applicant grower's orchard is located shall act as an exemption committee for that district and shall make or cause to be made such investigation as may be necessary to determine whether and to what extent such applicant will be prevented, because of the aforesaid grade, size, or quality regulations in effect, from shipping as large a percentage of the particular variety of his pears as the percentage of all pears of that particular variety permitted to be shipped from his district as determined by the Control Committee. In the event any member or alternate member of the Control Committee shall himself apply for an exemption certificate he shall be disqualified to serve as a member of the exemption committee to act upon the application.

§ 927.112 Issuance of exemption certificate.

In the event such exemption committee finds and determines from proof, satisfactory to the committee, that the applicant is entitled to an exemption certificate, such exemption certificate shall be issued so as to permit the applicant to ship or have shipped the requisite quantity of his pears. Each exemption certificate shall be signed by the secretary or assistant secretary of the Control Committee and one copy thereof shall be delivered to the grower, one copy shall be delivered to each shipper designated by the grower to receive a copy, and one copy shall be retained in the files of the Control Committee. In the event the secretary of the Control Committee has reason to believe that any such finding or determination by an exemption committee is improper or not in accordance with the facts, he may disapprove the same, and shall make or cause to be made such further investigation as he may determine to

be necessary or advisable, and may request or obtain such information as he may deem necessary to enable him to determine whether or not and to what extent an applicant is entitled to an exemption certificate.

§ 927.113 Appeal to Control Committee.

Any grower, whose application is denied in whole or in part by the appropriate exemption committee or by the secretary of the Control Committee, may file a written appeal with the Control Committee within fifteen (15) days after the date of the notice to such grower of the decision involved. Upon receipt of such appeal, the secretary of the Control Committee shall submit the same, together with all applicable information and data, including the report of the exemption committee on that grower's application to the members of the Control Committee, who thereafter shall review the same and shall determine whether and to what extent the applicant is entitled to an exemption certificate. Thereupon the secretary of the Control Committee shall issue to that grower such exemption certificate as the Control Committee shall determine to be proper.

§ 927.114 Appeal to Secretary.

Any grower who is dissatisfied with the Control Committee's determination with respect to any appeal by that grower from a decision by an exemption committee or by the Secretary of the Control Committee with respect to that grower's application for an exemption certificate, may appeal from such determination by the Control Committee to the Secretary of Agriculture. Any such appeal shall be made by filing with the secretary of the Control Committee a written notice of appeal within fifteen (15) days after notice to that grower of the aforesaid determination by the Control Committee. Promptly upon receipt of notice of an appeal signed by the applicant, the secretary of the Control Committee shall forward to the Secretary of Agriculture, or to his designated representative, a true and correct copy of all information pertaining to that grower's application for an exemption certificate and the action taken thereon by the Control Committee, together with such written information and proof as was submitted to or obtained by the Control Committee with regard to said application, and a true copy of the appellant grower's notice of appeal.

EXEMPTIONS AND SAFEGUARDS

§ 927.120 Pears for charitable or by-product purposes.

Pears which do not meet the requirements of the then effective grade, size, or quality regulations shall not be shipped or handled for consumption by any charitable institution or for distribution by any relief agency or for conversion into any by-product, unless there first shall have been delivered to the manager of the Control Committee a certificate executed by the intended receiver and user of said pears showing, to the manager's satisfaction, that said pears actually will be used for one or more of the aforesaid purposes.

§ 927.121 Pears for gift purposes.

There are exempted from the provisions of the marketing agreement and order any and all pears which, in individual gift packages, are shipped directly to, or which are shipped for distribution without resale to, an individual person as the consumer thereof, and any and all pears which, in individual gift packages are shipped directly to, or are shipped for distribution without resale to, a purchaser who will use these pears solely for gift purposes and not for sale.

§ 927.122 Shipments to designated storages.

(a) Pears may be shipped without prior inspection and certification to any public warehouse in Yakima, Zillah, Wenatchee, or Grandview in the State of Washington; in Portland, Klamath Falls, or Medford in the State of Oregon; or in Tulelake or Yuba City in the State of California, for storage therein in transit: *Provided*, That any pears so shipped shall be inspected, and a certificate issued with respect thereto, as provided in § 927.60 of the marketing agreement and order,

prior to such pears being removed from such warehouse. At the time any pears are so shipped into such public storage warehouse and again when such pears are shipped out of such warehouse, the handler shall, on his semimonthly "Handler's Statement of Pear Shipments," report each such shipment as prescribed in § 927.125(b).

(b) Any pears shipped to one of the aforesaid storage warehouses pursuant to this section which, upon inspection, do not meet the requirements of the then effective grade, size, or quality regulations may be (1) repacked at such warehouse so as to meet such requirements, (2) sold and delivered within the state where such warehouse is located for processing or conversion into by-products, or (3) returned to the state where the pears were produced for repacking or for sale within such state: *Provided*, That there first shall have been submitted to the manager of the Control Committee proof, satisfactory to the manager, that the pears will not be handled contrary to the provisions of the marketing agreement and order; such proof shall include, in the case of sale and delivery for by-products purposes, a written certificate, executed by both the handler and the intended receiver, stating that the pears will be processed or converted into by-products within the state where such warehouse is located.

[16 FR 10926, Oct. 27, 1951. Redesignated at 26 FR 12751, Dec. 30, 1961, and amended at 32 FR 13181, Sept. 16, 1967; 40 FR 42851, Sept. 17, 1975]

Reports

§ 927.125 Reports.

(a) Each shipper handling pears covered by an exemption certificate shall keep an accurate record, in the manner provided on such certificate, of all shipments of such pears. Such shipper, after having shipped as many pears as authorized by the particular exemption certificate, shall promptly mail to the Secretary of the Control Committee, such handler's copy of the exemption certificate containing an accurate record of such shipments.

(b) Each handler shall furnish to the Control Committee as of the first day and the fifteenth day, respectively, of each calendar month a report containing the following information on Form 1 "Handler's Statement of Pear Shipments":

(1) The number of standard western pear boxes (two half boxes shall be counted as one box) of each variety of pears shipped by that handler during the preceding half month;

(2) The date of each shipment;

(3) The ultimate destination, by city and State; and

(4) The name and address of such handler. In addition, the handler shall indicate, for each lot of pears shipped in accordance with the provisions of § 927.122, the storage lot number, and the name and address of the storage warehouse.

(c) Each handler shall furnish to the Control Committee, as of October 15 of each season and as of the fifteenth and last days of each month thereafter, a report containing the following information on Form 4R, "Handlers' Packout Report":

(1) The total of the packout of each variety;

(2) The quantity of each variety loose in storage;

(3) The volume of each variety sold, unsold, stored east and west, and in transit; and

(4) The name and address of such handler.

(d) Each handler who has pears inspected and certificated in lots larger than carload lots and who wishes to rely on such lot inspections in lieu of inspection certificates for individual carlot shipments shall deliver to the manager within 10 days after shipment of any such pears a written report showing the quantity, variety, grade, and size of the pears so shipped and the date of shipment thereof, and said report shall identify such pears with the lot-inspection certificate covering the same, and shall further show what portion of that lot remains unshipped, and where located; such report shall be in addition to, and not in lieu of, the semimonthly handler's reports of shipments required under paragraphs (b) and (c) of this section.

(e) Each handler shall specify on each bill of lading covering each shipment the variety, and number of boxes

thereof, of all pears included in that shipment.

[16 FR 10926, Oct. 27, 1951, as amended at 20 FR 7029, Sept. 20, 1955. Redesignated at 26 FR 12751, Dec. 30, 1961, and amended at 40 FR 42852, Sept. 17, 1975]

§ 927.142 Reserve fund.

(a) It is necessary and appropriate to establish and maintain an operating reserve fund in an amount not to exceed approximately one fiscal period's expenses to be used in accordance with the provisions of § 927.42 of the amended marketing agreement and this part, and

(b) Assessments collected for the period ended June 30, 1962, were in excess of the expenses for such period and the committee is hereby authorized to place $2,500 of such excess in said reserve.

[27 FR 9175, Sept. 15, 1962. Redesignated at 44 FR 73011, Dec. 17, 1979]

NOTE: After January 1, 1979, "Budget of Expenses and Rate of Assessment" regulations (e.g. sections .200 through .299) and "Handling" regulations (e.g. sections .300 through .399) which are in effect for a year or less, will not be carried in the Code of Federal Regulations. For FEDERAL REGISTER citations affecting these regulations, see the "List of CFR Sections Affected" in this volume.

PART 928—PAPAYAS GROWN IN HAWAII

Subpart—Order Regulating Handling

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AUTHORITY: Secs. 1-19, 48 Stat. 31, as amended; 7 U.S.C. 601-674.

SOURCE: 36 FR 8925, May 15, 1971, unless otherwise noted.

Subpart—Order Regulating Handing

Definitions

§ 928.1 Secretary.

"Secretary" means the Secretary of Agriculture of the United States, or any officer or employee of the Department to whom authority has heretofore been delegated, or to whom authority may thereafter be delegated, to act in his stead.

§ 928.2 Act.

"Act" means public Act No. 10, 73d Congress (May 12, 1933), as amended and as reenacted and amended by the Agricultural Marketing Agreement Act of 1937, as amended (46 Stat. 31, as amended; 7 U.S.C. 601–674).

§ 928.3 Person.

"Person" means an individual, partnership, corporation, association, or any other business unit.

§ 928.4 Papayas.

"Papayas" means any and all varieties of papayas grown in the production area.

§ 928.5 Production area.

"Production area" means the State of Hawaii.

§ 928.6 Fiscal year.

"Fiscal year" means the 12-month period beginning January 1 of each year, or such other period that may be approved by the Secretary pursuant to a recommendation by the committee: *Provided*, That the initial fiscal year shall begin on the effective date of this part.

§ 928.7 Committee.

"Committee" means the Papaya Administrative Committee established pursuant to § 928.20.

§ 928.8 Grower.

"Grower" is synonymous with "producer" and means any person who produces papayas for market, and who has a proprietary interest therein.

§ 928.9 Handler.

"Handler" is synonymous with "shipper" and means any person (except a common or contract carrier transporting papayas owned by another person) who handles papayas in fresh form or causes papayas to be handled.

§ 928.10 Handle.

"Handle" or "ship" are synonymous and mean to sell, consign, deliver, or transport papayas or cause papayas to be sold, consigned, delivered, or transported within the production area or between the production area and any point outside thereof: *Provided*, That such term shall not include: (a) The sale of papayas on the tree; (b) the transportation of papayas from the location where grown to a packinghouse within the production area for the purpose or having such papayas prepared for market; or (c) the sale of papayas at retail by a person in his capacity as a retailer.

§ 928.11 District.

"District" means the applicable one of the following described subdivisions of the production area, or such other subdivisions as may be prescribed pursuant to § 928.31(n):

(a) District 1 shall include the island of Hawaii.

(b) District 2 shall include the county of Maui which consists of the islands of Maui, Molakai, Lanai, and Kahoolawe, and Kalawao County.

(c) District 3 shall include the county of Kauai which consists of the islands of Kauai and Niihau.

(d) District 4 shall include the county of Honolulu which includes all of the island of Oahu.

§ 928.12 Export.

"Export" means to ship papayas to any point outside the State of Hawaii.

Administrative Body

§ 928.20 Establishment and membership.

There is hereby established a Papaya Administrative Committee consisting of thirteen (13) members, each of whom shall have an alternate who shall have the same qualifications

as the member for whom he is an alternate. Ten (10) of the members and their respective alternates shall be growers and are referred to as "growers" members of the committee. Seven of the ten grower members and their respective alternates shall be producers of papayas in District 1, one grower member and his alternate shall be producers of papayas in District 2, one grower member and his alternate shall be producers of papayas in District 3, and one grower member and his alternate shall be producers of papayas in District 4. No grower organization shall be permitted to have more than three (3) members on the committee. The three (3) handler members and their respective alternates shall be selected from the production area at large. No handler organization shall be permitted to have more than one (1) handler member on the committee.

§ 928.21 Term of office.

The term of office of each member and alternate member of the committee shall be for 2 years beginning January 1 and ending on the second succeeding December 31 or such other dates as the Secretary may establish pursuant to a recommendation of the committee: *Provided*, That the term of office of the initial members and their alternates shall end December 31, 1972. Members and alternate members shall serve in such capacity for the portion of the term of office for which they are selected and have qualified and until their respective successors are selected and have qualified.

§ 928.22 Nomination.

(a) *Initial members.* Nominations for each of the initial members of the committee, together with nominations for the initial alternate members for each position, may be submitted to the Secretary by individual growers and handlers. Such nomination may be made by means of a meeting of handlers, and group meetings of growers concerned in each district. Such nominations, if made, shall be filed with the Secretary no later than the effective date of this part. In the event nominations for the initial members are not filed pursuant to, and within the time specified in this section, the Secretary may select such initial members and alternate members without regard to nominations, but selection shall be on the basis of the representation provided for in § 928.23.

(b) *Successor members.* (1) The committee shall hold or cause to be held, not later than November 15 of each even numbered year, separate meetings of growers in each district and a meeting of handlers for the purpose of designating nominees for successor members and alternate member of the committee, which shall be publicized and open to all growers and handlers. At each grower meeting, a chairman and a secretary shall be selected by growers eligible to participate therein. The chairman shall announce at the meeting the number of votes cast for each person nominated for member or alternate member and shall submit promptly to the committee a complete report concerning such meeting. The committee shall, in turn, promptly submit a copy of each such report to the Secretary. At each handler meeting, a chairman and a secretary may be selected by the handlers eligible to participate therein. If a chairman is elected he shall announce the number of votes cast for each person nominated for member or alternate member and shall submit promptly to the committee a report concerning such meeting. If a chairman is not elected some person shall be designated to file a report with the committee concerning such meeting. The committee shall, in turn, promptly submit a copy of each such report to the Secretary.

(2) Only growers, including duly authorized officers or employees of growers, who are present at such nomination meetings may participate in the nomination and election of nominees for grower members and their alternates. Each grower shall be entitled to cast only one vote for each nominee to be elected in the district in which he produces papayas. No grower shall participate in the election of nominees in more than one district in any one fiscal year. If a person is both a grower and a handler of papayas, such person may vote either as a grower or as a handler but not as both.

(3) Only handlers, including duly authorized officers or employees of handlers, who are present at such nomination meetings may participate in the nomination and election of nominees for handler members and their alternates. Each handler shall be entitled to cast only one vote, which vote shall be weighted by the volume of papayas handled by such handler during the then current fiscal year. If a person is both a grower and a handler of papayas, such person may vote either as a grower, or as a handler but not as both.

§ 928.23 Selection.

(a) *Initial members.* From the nominations made pursuant to § 928.22(a), or from other qualified persons, the Secretary shall select the inital members of the committee and an alternate for each such member on the basis of the representation provided for in § 928.20.

(b) *Successor members.* From the nominations made pursuant to § 928.22, or from other qualified persons, the Secretary shall select the 10 grower members of the committee, the three handler members of the committee, and an alternate for each such member.

§ 928.24 Failure to nominate.

If nominations are not made within the time and in the manner prescribed in § 928.22 the Secretary may, without regard to nominations, select the members and alternate members of the committee on the basis of the representation provided for in § 928.20.

§ 928.25 Acceptance.

Any person selected by the Secretary as a member or as an alternate member of the committee shall qualify by filing a written acceptance with the Secretary promptly after being notified of such selection.

§ 928.26 Vacancies.

To fill any vacancy occasioned by the failure of any person selected as a member or as an alternate of the committee to qualify, or in the event of the death, removal, resignation, or disqualification of any member or alternate member of the committee, a successor for the unexpired term of such member or alternate member of the committee shall be nominated and selected in the manner specified in §§ 928.22 and 928.23. If the names of nominees to fill any such vacancy are not made available to the Secretary within a reasonable time after such vacancy occurs the Secretary may fill such vacancy without regard to nominations, which selection shall be made on the basis of representation provided for in § 928.20.

§ 928.27 Alternate members.

An alternate member of the committee, during the absence or at the request of the member for whom he is an alternate, shall act in the place and stead of such member and perform such other duties as assigned. In the event of the death, removal, resignation, or disqualification of a member, his alternate shall act for him until a successor for such member is selected and has qualified.

§ 928.30 Powers.

The committee shall have the following powers:

(a) To administer the provisions of this part in accordance with its terms;

(b) To receive, investigate, and report to the Secretary complaints of violations of the provisions of this part;

(c) To make and adopt rules and regulations to effectuate the terms and provisions of this part; and

(d) To recommend to the Secretary amendments to this part.

§ 928.31 Duties.

The committee shall have, among others, the following duties:

(a) To select a chairman and such other officers as may be necessary, and to define the duties of such officers; and to select sub-committees, advisory committees or other committees and define the duties of each;

(b) To appoint such employees, agents, and representatives as it may deem necessary, and to determine the compensation and to define the duties and procedures of each;

(c) To submit to the Secretary prior to each fiscal year a budget for such

fiscal year, including a report in explanation of the items appearing therein and a recommendation as to the rate of assessment for such fiscal year;

(d) To keep minutes, books, and records which will reflect all of the acts and transactions of the committee and which shall be subject to examination by the Secretary;

(e) To prepare a statement of the financial operations of the committee and to make copies of each such statement available to growers and handlers for examination at the office of the committee;

(f) To require adequate fidelity bonds for all persons handling funds;

(g) To cause its books to be audited by a competent public accountant at least once each fiscal year, and at such other times as the Secretary may request;

(h) To act as intermediary between the Secretary and any grower or handler;

(i) To provide an adequate system for estimating the total season crop of papayas and to make such determinations, as it may deem necessary, or as may be prescribed by the Secretary, in connection with the administration of this part;

(j) To investigate the growing, handling, and marketing conditions with respect to papayas, and to assemble data in connection therewith;

(k) To engage in such research relating to the determination of maturity and grade standards for papayas as may be approved by the Secretary;

(l) To submit to the Secretary such available information, including verified reports, as he may request;

(m) To notify producers and handlers of meetings of the committee to consider recommendations for regulation;

(n) To investigate compliance with the provisions of this part; and

(o) With the approval of the Secretary to redefine the districts into which the production area is divided, and to reapportion the representation of any district on the committee: *Provided,* That any such changes shall reflect, insofar as practicable, shifts in papaya production within the districts and the production area.

§ 928.32 Procedure.

(a) A majority of the committee, including alternates acting for members, shall constitute a quorum; and any action of the committee shall require at least seven concurring votes;

(b) The committee may vote by telegraph, telephone, or other means of communication, and any vote so cast shall be confirmed promptly in writing: *Provided,* That if any assembled meeting is held, all votes shall be cast in person.

(c) All meetings of the committee held for the purpose of formulating a marketing policy, for formulating recommendations for regulations, or for consideration of matters pertaining to production research, marketing research and development projects, including paid advertising shall be open to the growers and handlers. The committee shall give notice to each grower and handler who has requested such notice and has filed his name and address with the committee.

§ 928.33 Expenses and compensation.

The members of the committee and alternates when acting as members, or when requested by the committee to attend a committee meeting or to perform another committee function, may be reimbursed for expenses necessarily incurred by them in the performance of their duties under this part.

§ 928.34 Annual report.

The committee may, as soon as practicable after the end of the fiscal year, prepare and mail an annual report to the Secretary and make a copy available to each handler and grower who requests a copy of the report. This annual report shall contain at least: (a) A complete review of the regulatory operations during the fiscal year; (b) an appraisal of the effect of such regulatory operations upon the papaya industry; and (c) any recommendations for changes in the program.

EXPENSES AND ASSESSMENTS

§ 928.40 Expenses.

The committee is authorized to incur such expenses as the Secretary finds are reasonable and likely to be incurred by the committee for its maintenance and functioning and to enble it to exercise its powers and perform its duties in accordance with the provisions of this part during each fiscal year. The funds to cover such expenses shall be acquired by the levying of assessments as prescribed in § 928.41.

§ 928.41 Assessments.

(a) Each person who first handles papayas shall, with respect to the papayas so handled by him, pay to the committee upon demand such person's pro rate share of the expenses which the Secretary finds are reasonable and likely to be incurred by the committee during each fiscal year. Each such person's share of such expenses shall be equal to the ratio between the total quantity of papayas handled by him as the first handler thereof during the applicable fiscal year and the total quantity of papayas so handled by all persons during the same fiscal year. The payment of assessments for the maintenance and functioning of the committee may be required under this part throughout the period it is in effect irrespective of whether particular provisions thereof are suspended or become inoperative.

(b) The Secretary shall fix the rate of assessment to be paid by each such person. At any time during or after the fiscal year, the Secretary may increase the rate of assessment in order to secure sufficient funds to cover any later finding by the Secretary relative to the expenses which may be incurred. Such expenses shall be applied to all papayas handled during the applicable fiscal year. In order to provide funds for the administration of the provisions of this part during the first part of a fiscal year before sufficient operating income is available from assessments on the current year's shipments, the committee may accept the payment of assessments in advance, and may also borrow money for such purpose. If a handler does not pay his assessment within the time prescribed by the committee, the unpaid assessment may be subject to an interest charge at rates prescribed by the committee, with the approval of the Secretary.

§ 928.42 Accounting.

(a) If, at the end of a fiscal year the assessments collected are in excess of expenses incurred, such expenses shall be accounted for as follows:

(1) Except as provided in paragraphs (a)(2) and (3) of this section, each person entitled to a proportionate refund of any excess assessment shall be credited with such refund against the operation of the following fiscal year unless such person demands payment thereof, in which event it shall be paid to him: *Provided*, That any sum paid by a person in excess of this pro rata share of the expenses during any fiscal year may be applied by the committee at the end of such fiscal year to any outstanding obligations from such person.

(2) The committee, with the approval of the Secretary, may establish and maintain during one or more fiscal years, an operating monetary reserve in an amount not to exceed approximately 1 fiscal year's operational expense. Upon approval by the Secretary, funds in such reserve shall be available for use by the committee for all expenses pursuant to § 928.40.

(3) Upon termination of this part, any funds not required to defray the necessary expenses of liquidation shall be disposed of in such manner as the Secretary may determine to be appropriate: *Provided*, That to the extent practical, such funds will be returned pro rata to the persons from whom such funds were collected.

(b) All funds received by the committee pursuant to the provisions of this part shall be used solely for the purposes specified in this part and shall be accounted for in the manner provided in this part. The Secretary may at any time require the committee and its members to account for all receipts and disbursements.

(c) Upon the removal or expiration of the term of office of any member of the committee, such member shall ac-

count for all receipts and disbursements and deliver all property and funds in his possession to his successor in office and shall execute such assignments and other instruments as may be necessary or appropriate to vest in such successor full title to all of the property, funds and claims vested in such member pursuant to this part.

Research

§ 928.45 Production research, marketing research and development.

(a) The committee, with the approval of the Secretary may establish or provide for the establishment of production research, marketing research, and development projects designed to assist, improve, or promote the production, marketing, distribution, and consumption of papayas. Such projects may provide for any form of marketing promotion including paid advertising. The expense of such projects shall be paid by funds collected pursuant to § 928.41.

(b) In recommending projects pursuant to this section, the committee shall give consideration to the following factors:

(1) The expected supply of papayas in relation to market requirements;

(2) The supply situation among competing areas and commodities;

(3) The need for production or marketing research with respect to any production or marketing development activity.

(c) If the committee should conclude that a program of production or marketing research or development should be undertaken or continued pursuant to this section in any fiscal year, it shall submit the following for the approval of the Secretary:

(1) Its recommendation as to funds to be obtained pursuant to the applicable provisions of this part and the rate of assessment required to obtain such funds;

(2) Its recommendation as to any production research or marketing research projects; and

(3) Its recommendation as to promotion activity and paid advertising.

Regulations

§ 928.50 Marketing policy.

(a) Each season prior to making any recommendations pursuant to § 928.51, the committee shall submit to the Secretary a report setting forth its marketing policy for the season. Such marketing policy report shall contain information relative to:

(1) The estimated total production of papayas within the production area;

(2) The estimated utilization of the crop, showing the quantity and percentages of the crop expected to be marketed through fresh fruit channels within the State of Hawaii, within the continent of North America, and within the balance of the markets of the world; and showing the quantity and percent of the crop expected to be marketed through byproduct channels, together with quantities otherwise to be disposed of;

(3) Available supplies of competitive papayas in all producing areas of the United States and other competitive producing areas;

(4) Trend and level of consumer income;

(5) Other factors having a bearing on the marketing of papayas; and

(6) The type of regulations expected to be recommended during the season.

(b) In the event that it becomes advisable to substantially modify such marketing policy the committee shall submit to the Secretary a revised marketing policy setting forth the information as required in this section. The committee shall transmit a copy of each marketing policy report or revision thereof to the Secretary. Copies of all such reports shall be maintained in the office of the committee where they shall be available for examination by growers and handlers. The committee shall announce the contents of each marketing policy report, including each revised marketing policy report.

§ 928.51 Recommendations for regulation.

(a) Whenever the committee deems it advisable to regulate the handling of papayas in the manner provided in § 928.52 it shall so recommend to the Secretary.

(b) In arriving at its recommendations for regulation pursuant to paragraph (a) of this section, the committee shall give consideration to current information with respect to the factors affecting the supply and demand for papayas during the period or periods when it is proposed that such regulation should be made effective. With each such recommendation for regulation, the committee shall submit to the Secretary the data and information on which such recommendation is predicated and such other available information as the Secretary may request.

§ 928.52 Issuance of regulations.

(a) The Secretary shall regulate, in the manner specified in this section, the handling of papayas whenever he finds, from the recommendations and information submitted by the committee, or from other available information, that such regulation will tend to effectuate the declared policy of the act. Such regulation may:

(1) Limit, during any period or periods, the shipment of any particular grade, size, quality, maturity, or pack, or any combination thereof, of any variety or varieties of papayas grown in the production area;

(2) Limit the shipment of papayas by establishing, in term of grades, sizes, or both, minimum standards of quality and maturity during any period when season average prices are expected to exceed the parity level;

(3) Fix the size, capacity, weight, dimension, or pack of the container, or containers, which may be used in the packaging or handling of papayas;

(4) Prescribe requirements, as provided in this paragraph, applicable to exports of any variety of papayas which are different from those applicable to the handling of the same variety to other destinations.

(b) The committee shall be informed immediately of any such regulation issued by the Secretary, and the committee shall promptly give notice thereof, to growers and handlers.

§ 928.53 Modification, suspension, or termination of regulations.

(a) In the event the committee at any time finds that, by reason of changed conditions, any regulations issued pursuant to § 928.52 should be modified, suspended, or terminated, it shall so recommend to the Secretary.

(b) Whenever the Secretary finds from the recommendation and information submitted by the committee or from other available information, that a regulation should be modified, suspended, or terminated with respect to any or all shipments of papayas in order to effectuate the declared policy of the act, he shall modify, suspend, or terminate such regulation. On the same basis and in like manner the Secretary may terminate any such modification or suspension.

§ 928.54 Special purpose and minimum quantity shipments.

(a) Except as otherwise provided in this section, any person may, without regard to the provisions of §§ 928.41, 928.52, 928.53 and 928.55, and the regulations issued thereunder, handle papayas (1) for consumption by charitable institutions; (2) for distribution by relief agencies; or (3) for commercial processing into products.

(b) Upon the basis of recommendations and information submitted by the committee, or from other available information, the Secretary may relieve from any or all requirements under or established pursuant to §§ 928.41, 928.52, 928.53, and 928.55, the handling of papayas in such minimum quantities, in such types of shipments, or for such specified purposes (including shipments to facilitate the conduct of marketing research and development projects established pursuant to § 928.45) as the committee, with the approval of the Secretary, may prescribe.

(c) The committee shall, with the approval of the Secretary, prescribe such rules, regulations, and safeguards as it may deem necessary to assure compliance with this section. Such rules, regulations, and safeguards may include the requirements that handlers shall file applications and receive approval from the committee for authorization to handle papayas pursuant to this section, and that such application be accompanied by certification by the intended purchaser or re-

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ceiver that the papayas will not be used for any purpose not authorized by this section.

§ 928.55 Inspection and certification.

(a) Whenever the handling of any variety of papayas is regulated pursuant to § 928.52 or § 928.53, each handler who handles papayas shall, prior thereto, cause such papayas to be inspected by the Federal or Federal-State Inspection Service, and certified by it as meeting the applicable requirements of such regulation: *Provided,* That inspection and certification shall be required for papayas which previously have been so inspected and certified only if such papayas have been regraded, resorted, repackaged, or in any other way further prepared for market. Promptly after inspection and certification, each such handler shall submit or cause to be submitted to the committee a copy of the certificate of inspection issued with respect to such papayas.

(b) The committee may enter into an agreement with the inspection agency with respect to the costs of inspection required by paragraph (a) of this section, and may collect from handlers their respective pro rata shares of such costs.

REPORTS

§ 928.60 Reports.

(a) Upon request of the committee, made with the approval of the Secretary, each handler shall furnish to the committee, in such manner and at such time as it may prescribe, reports of papayas received and disposed of and such other information as may be necessary for the committee to perform its duties under this part.

(b) All such reports shall be held under appropriate protective classification and custody by the committee, or duly appointed employees thereof, so that the information contained therein which may adversely affect the competitive position of any handler in relation to other handlers will not be disclosed. Compilations of general reports from data submitted by handlers are authorized, subject to the prohibition of disclosure of individual handler's identities or operations.

(c) Each handler shall maintain for at least 2 succeeding fiscal years such records of the papayas received and of papayas disposed of by such handler as may be necessary to verify reports pursuant to this section.

(d) Verification of reports: For the purpose of assuring compliance and checking and verifying the reports filed by handlers, the Secretary and the Committee, through its duly authorized agents, shall have access to any premises where applicable records are maintained, where papayas are handled, and, at any time during reasonable business hours, shall be permitted to inspect such handlers' premises and any and all records of such handlers with respect to matters within the purview of this part.

MISCELLANEOUS PROVISIONS

§ 928.61 Compliance.

Except as provided in this part, no person shall handle papayas, the shipment of which has been prohibited by the Secretary in accordance with the provisions of this part; and no person shall handle papayas except in conformity with the provisions and the regulations issued under this part.

§ 928.62 Right of the Secretary.

The members of the committee (including successors and alternates), and any agents, employees, or representatives thereof, shall be subject to removal or suspension by the Secretary at any time. Each and every regulation, decision, determination, or other act of the committee shall be subject to the continuing right of the Secretary to disapprove of the same at any time. Upon such disapproval, the disapproved action of the committee shall be deemed null and void, except as to acts done in reliance thereon or in accordance therewith prior to such disapproval by the Secretary.

§ 928.63 Effective time.

The provisions of this part and of any amendments thereto shall become effective at such time as the Secretary may declare above his signature, and shall continue in force until terminat-

ed in one of the ways specified in § 928.64.

§ 928.64 Termination.

(a) The Secretary may at any time terminate the provisions of this part by giving at least 1 day's notice by means of a press release or in any other manner in which he may determine.

(b) The Secretary shall terminate or suspend the operation of any and all of the provisions of this part whenever he finds that such provisions do not tend to effectuate the declared policy of the act.

(c) The Secretary shall terminate the provisions of this part at the end of any fiscal year whenever he finds by a referendum or otherwise that continuance is not favored by the majority of producers who, during a representative period determined by the Secretary, were engaged in the production of papayas for market: *Provided,* That such majority has produced for market during such period more than 50 percent of the volume of papayas produced in the production area; but such termination shall be effective only if announced on or before December 15 of the then current fiscal year.

(d) Upon recommendation of the committee, received not later than October 1 of an even-numbered year, the Secretary shall conduct a referendum prior to December 1 of such year to ascertain whether continuance of this part is favored by the growers.

(e) The provisions of this part shall, in any event, terminate whenever the provisions of the act authorizing them cease to be in effect.

§ 928.65 Proceedings after termination.

(a) Upon the termination of the provisions of this part, the committee shall, for the purpose of liquidating the affairs of the committee, continue as trustees of all the funds and property then in its possession, or under its control, including claims for any funds unpaid or property not delivered at the time of such termination.

(b) The said trustees shall (1) continue in such capacity until discharged by the Secretary; (2) from time to time account for all receipts and disbursements and deliver all property on hand, together with all books and records of the committee and of the trustees, to such persons as the Secretary may direct; and (3) upon request of the Secretary, execute such assignments or other instruments necessary or appropriate to vest in such person, full title and right to all of the funds, property, and claims vested in the committee or the trustees pursuant thereto.

(c) Any person to whom funds, property, or claims have been transferred or delivered, pursuant to this section, shall be subject to the same obligation imposed upon the committee and upon the trustees.

§ 928.66 Effect of termination or amendment.

Unless otherwise expressly provided by the Secretary, the termination of this part or of any regulation issued pursuant to this part, or the issuance of any amendment to either thereof, shall not (a) affect or waive any right, duty, obligation, or liability which shall have arisen or which may thereafter arise in connection with any provisions of this part or any regulation issued under this part, or (b) release or extinguish any violation of this part, or of any regulation issued under this part, or (c) affect or impair any rights or remedies of the Secretary or of any other person with respect to any violation.

§ 928.67 Duration of immunities.

The benefits, privileges, and immunities conferred upon any person by virtue of this part shall cease upon the termination of this part, except with respect to acts done under and during the existence of this part.

§ 928.68 Agents.

The Secretary may, by designation in writing, name any officer or employee of the United States, or name any agency or division in the U.S. Department of Agriculture, to act as his agent or representative in connection with any of the provisions of this part.

§ 928.69 Derogation.

Nothing contained in the provisions of this part is, or shall be construed to be, in derogation or in modification of the rights of the Secretary or of the United States (a) to exercise any powers granted by the act or otherwise, or (b) in accordance with such powers, to act in the premises whenever such action is deemed advisable.

§ 928.70 Personal liability.

No member or alternate member of the committee and no employee or agent of the committee shall be held personally responsible, either individually or jointly with others, in any way whatsoever, to any person for errors in judgment, mistakes, or other acts, either of commission or omission, as such member, alternate, employee, or agent, except for acts of dishonesty, willful misconduct, or gross negligence.

§ 928.71 Separability.

If any provision of this part is declared invalid or the applicability thereof to any person, circumstance, or thing is held invalid, the validity of the remainder of this part or the applicability thereof to any other person, circumstance, or thing shall not be affected thereby.

§ 928.111 District redefinition.

"District" means the applicable one of the following described subdivisions of the production area:

(a) District 1 shall include the island of Hawaii.

(b) District 2 shall include the county of Kauai which consists of the islands of Kauai and Niihau; the county of Maui which consists of the islands of Maui, Molakai, Lanai, and Kahoolawe; and Kalawao County.

(c) District 3 shall include the county of Honolulu which includes all of the island of Oahu.

[49 FR 44200, Nov. 5, 1984 and 50 FR 1439, Jan. 11, 1985]

§ 928.120 Committee reapportionment.

Grower members of the committee shall be as follows:

(a) Seven grower members and their alternates shall be producers of papayas in District 1.

(b) Two grower members and their alternates shall be producers of papayas in District 2: *Provided*, that at least one alternate grower member shall be a producer of papayas in either Maui or Kalawao County.

(c) One grower member and alternate shall be producers of papayas in District 3.

[49 FR 44200, Nov. 5, 1984 and 50 FR 1439, Jan. 11, 1985]

Subpart—Rules and Regulations

SOURCE: 36 FR 22360, Nov. 25, 1971, unless otherwise noted.

§ 928.141 Interest charges.

(a) Assessments levied pursuant to § 928.41 not paid within five days after the 25th of each month on papayas handled during the preceding month shall be subject to an interest charge of one and one-half percent per month.

(b) Notification that assessments are due not later than five days after the 25th of each month shall constitute a demand on a handler for the payment of the handler's pro rata share of expenses within the meaning of § 928.41(a).

[50 FR 31586, Aug. 5, 1985]

§ 928.150 Exemption from inspection.

(a) *Waivers.* A handler may handle papayas without inspection and certification, as prescribed under § 928.55, if all the following conditions are met:

(1) The handler requests the Federal-State Inspection Service to provide inspection during its regular working hours at least 2 hours in advance of the time when inspection is needed. The request need not be in writing but it shall be confirmed immediately in writing on a waiver form supplied by the inspection service;

(2) The Federal-State Inspection Service advises the handler that it is not practicable to provide inspection at the time and place designated by the handler. Such advice may be verbal but it shall be confirmed in

writing by the Federal-State Inspection Service by execution of the waiver form on which the handler submitted his written request. A confirmed copy thereof shall be forwarded by the inspection service to the office of the Papaya Administrative Committee;

(3) The Federal-State Inspection Service furnishes the handler with the number of the waiver which shall cover the fruit on which inspection is requested;

(4) When so instructed, the handler plainly and conspicuously marks one end of each container with the letter "W" and the waiver number supplied by the Federal-State Inspection Service. The letter W and the number so marked shall be not less than one-half inch in height.

§ 928.151 Special purpose shipments.

(a) Papayas delivered to a handler for sale by the handler for the account of the grower shall be deemed a consignment only with respect to papayas which are actually sold by the handler; consignment shall not extend to those papayas delivered but disposed of by dumping as evidenced by a dumping certificate issued by the Federal-State Inspection Service. Papayas not consigned as herein defined shall not be subject to assessment levied pursuant to § 928.41.

(b) Any handler may, after application for and receipt of committee approval, handle papayas to be used as animal feed exempt from the provisions of §§ 928.41, 928.52, 928.53, and 928.55 and the regulations issued thereunder.

(1) Such application shall be made prior to handling, on the forms provided by the committee and shall be accompanied by certification stating that the fruit will be used for the applied for purpose.

(c) Any handler may, after application for and receipt of committee approval, handle papayas exempt from the provisions of §§ 928.41, 928.52, 928.53, and 928.55, and the regulations issued thereunder: *Provided,* That such fruit is donated for use by charitable institutions or distribution by relief agencies.

(d) Any handler may, after application for and receipt of committee approval, handle papayas exempt from the provisions of §§ 928.41, 928.52, 928.53, and 928.55 and the regulations issued thereunder, for market research and development projects.

(e) Any handler may handle papayas exempt from the provisions of §§ 928.41, 928.52, 928.53, and 928.55 and the regulations issued thereunder, for commercial processing. Commercial processing of papayas means to can, freeze, cook, slice, dice, or pickle or convert such fruit into a beverage base for resale. All other product forms are considered fresh fruit and are subject to the provisions of the agreement and order.

§ 928.152 Maturity exemption.

(a) An immature papaya is one which has not reached the stage of maturity wherein the lower or blossom end half of the papaya shows a definite tinge of yellow.

(b) The handling of immature papayas shall be limited to papaya handlers whose name appears on the committee's current list of approved immature papaya handlers established pursuant to paragraph (c) of this section. Such papayas so handled shall be exempt from grade, size, quality, and maturity regulations issued pursuant to §§ 928.52 and 928.53.

(c) Any handler who desires to handle immature papayas shall, prior thereto, file with the committee an application and agreement therefor on PAC Form 7, which shall contain the following information: (1) Name and address of the applicant; (2) an agreement that containers of immature papayas handled to destinations within the State of Hawaii shall be clearly marked "Off-Grade—Immature" or "Immature" in letters not less than one-half inch in height and further that each immature papaya, regardless of destination, shall be stamped or labeled in a uniform manner approved by the committee indicating immaturity; and (3) an agreement to promptly submit such reports on immature papayas handled at such times as may be required by the committee. The application shall be signed by the applicant or an authorized employee of the applicant and filed with the committee.

(d) If approved by the committee, the applicant's name shall be placed on the committee's list of approved immature papaya handlers. The applicant shall be notified of the committee's action.

(e) The committee may reject an application for just cause, such as a handler's past failure to comply with the requirements for the handling of immature papayas or his past failure to promptly submit reports as may be required under paragraph (c)(3) of this section and may also, for like causes, immediately suspend upon written notice, authorization previously granted a handler to handle immature papayas and remove his name from the list of approved immature papaya handlers.

[42 FR 17422, Apr. 1, 1977]

§ 928.153 Minimum quantities exemption.

(a) Any producer may apply to the committee to handle papayas he or she produces direct to consumers exempt from the provisions of §§ 928.41, 928.52, 928.53, and 928.55. Such application shall show:

(1) The name and address of the producer;

(2) The location of the orchard, the acreage in such orchard, and the estimated production thereof;

(3) The location at which the producer will sell the papayas to consumers; and

(4) An agreement to submit such reports as may be required by the committee.

(b) Upon approval of the producer's application, such producer may sell not to exceed a total of 100 pounds of papayas during any one day direct to consumers for home use and not for resale.

[45 FR 50325, July 29, 1980]

§ 928.160 Utilization reports.

(a) Each handler shall file with the Papaya Administrative Committee, not later than the 15th day of each month, a duly executed PAC Form 1 reporting all papayas handled by him during the immediately preceding calendar month. Such report shall include, but is not limited to, the following information: (1) Quantity of papayas handled subject to assessments and regulations including the date, destination, and inspection certificate number of each shipment; (2) quantity of papayas handled without regard to the assessment or regulatory provisions of the marketing agreement and order with such quantity itemized as to the amount (i) shipped to authorized commercial processors, (ii) donated to charitable organizations or relief agencies, (iii) shipped to authorized market research and development projects, and (iv) disposed of otherwise, and indicating such disposition.

NOTE: After January 1, 1979,"Budget of Expenses and Rate of Assessment" regulations (e.g. sections .200 through .299) and "Handling" regulations (e.g. sections .314 through .399) which are in effect for a year or less, will not be carried in the Code of Federal Regulations. For FEDERAL REGISTER citations affecting these regulations, see the "List of CFR Sections Affected" in this volume.

§ 928.313 Hawaiian Papaya Regulation 13.

(a) On and after October 17, 1984, no handler shall ship any container of papayas to any destination (except immature papayas handled pursuant to § 928.152) unless such papayas grade at least Hawaii No. 1: *Provided,* That not more than 5 percent shall be immature fruit: *Provided further,* That the weight requirements specified in this grade shall not apply to such shipments.

(b) "Hawaii No. 1" cited in this regulation is specified in the Hawaii Department of Agriculture Standards for Fruits and Vegetables (Title 4, Subtitle 4, Chapter 41, Subchapter 7, § 4-41-52) (5/29/81). Copies of the grade specifications are available from William J. Doyle, Chief, Fruit Branch, F&V, AMS, USDA, Washington, D.C. 20250, telephone 202-447-5975, and they are also available for inspection at the Office of the Federal Register Information Center, Room 8301, 1100 L Street, NW., Washington, D.C. 20408. This incorporation by reference was approved by the Director of the Federal Register. The materials are incorporated as they exist on the date of approval and a notice of any changes in the material will be published in the FEDERAL REGISTER.

[49 FR 24109, June 12, 1984, as amended at 49 FR 40559, Oct. 17, 1984 and 50 FR 1439, Jan. 11, 1985]

PART 929—CRANBERRIES GROWN IN STATES OF MASSACHUSETTS, RHODE ISLAND, CONNECTICUT, NEW JERSEY, WISCONSIN, MICHIGAN, MINNESOTA, OREGON, WASHINGTON, AND LONG ISLAND IN THE STATE OF NEW YORK

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AUTHORITY: Secs. 1-19, 48 Stat. 31, as amended; 7 U.S.C. 601-674.

SOURCE: 27 FR 8101, Aug. 15, 1962, unless otherwise noted.

Subpart—Order Regulating Handling

DEFINITIONS

§ 929.1 Secretary.

"Secretary" means the Secretary of Agriculture of the United States, or any officer or employee of the United States Department of Agriculture to whom authority has heretofore been delegated, or to whom authority may hereafter be delegated, to act in his stead.

§ 929.2 Act.

"Act" means Public Act No. 10, 73d Congress (May 12, 1933), as amended, and as reenacted and amended by the Agricultural Marketing Agreement Act of 1937, as amended (secs. 1-19, 48 Stat. 31, as amended; 7 U.S.C. 601-674).

§ 929.3 Person.

"Person" means an individual, partnership, corporation, association, or any other business unit.

§ 929.4 Production area.

"Production area" means the States of Massachusetts, Rhode Island, Connecticut, New Jersey, Wisconsin, Michigan, Minnesota, Oregon, Washington, and Long Island in the State of New York.

§ 929.5 Cranberries.

"Cranberries" means all varieties of the fruit Vaccinium Macrocarpon, known as cranberries, grown in the production area.

§ 929.6 Fiscal period.

"Fiscal period" is synonymous with "fiscal year" and "crop year" and means the 12-month period beginning September 1 of 1 year and ending August 31 of the following year.

[33 FR 11640, Aug. 16, 1968]

§ 929.7 Committee.

"Committee" means the Cranberry Marketing Committee established pursuant to § 929.20.

§ 929.8 Grower.

"Grower" is synonymous with producer and means any person who produces cranberries for market and who has a proprietary interest therein.

§ 929.9 Handler.

"Handler" means any person who handles cranberries.

§ 929.10 Handle.

"Handle" means (a) to can, freeze, or dehydrate cranberries within the production area, or (b) to sell, consign, deliver, or transport (except as a common or contract carrier of cranberries owned by another person) fresh cranberries, or in any other way to place fresh cranberries, in the current of commerce between the production area and any point outside thereof in the United States or Canada or within the production area: *Provided*, That the term "handle" shall not include (1) the sale of unharvested cranberries, (2) the delivery of cranberries by the grower thereof to a handler having packing or processing facilities located within the production area, nor (3) the transportation of cranberries from the bog where grown to a packing or processing facility, located within the production area.

§ 929.11 To can, freeze, or dehydrate.

"To can, freeze, or dehydrate" means to convert cranberries into canned, frozen, or dehydrated cranberries or other cranberry products by any commercial process.

§ 929.12 Acquire.

"Acquire" means to obtain cranberries by any means whatsoever for the purpose of handling such cranberries.

§ 929.13 Base quantity.

"Base quantity" means the number of pounds of cranberries established for a grower by the committee pursuant to § 929.48.

[33 FR 11640, Aug. 16, 1968]

§ 929.14 Marketable quantity.

"Marketable quantity" means for a crop year the number of pounds of cranberries necessary to meet the total market demand and to provide for an adequate carryover.

[33 FR 11640, Aug. 16, 1968]

§ 929.15 Annual allotment.

"Annual allotment" means for a grower in a particular crop year a quantity equivalent to the number of pounds of cranberries determined by multiplying the base quantity of such grower by the allotment percentage established pursuant to § 929.49 for such crop year.

[33 FR 11640, Aug. 16, 1968]

§ 929.16 Established cranberry acreage.

"Established cranberry acreage" means acreage which is presently producing cranberries on a commercial basis or acreage which has been recently planted or will be planted prior to the effective date of this amendment to produce cranberries on a commercial basis.

[33 FR 11640, Aug. 16, 1968]

ADMINISTRATIVE BODY

§ 929.20 Establishment and membership.

There is hereby established a Cranberry Marketing Committee consisting of seven members, each of whom shall have an alternate. Except as hereafter provided, members and their alternates shall be growers or employees, agents, or duly authorized representatives of growers. Persons filling grower positions may be referred to as industry members. The committee may be increased by one public member and alternate nominated by the committee and selected by the Secretary. The public member and alternate shall be neither a grower nor a handler. Persons filling these positions may be referred to as non-industry members. The committee, with the approval of the Secretary, shall prescribe qualifications and the procedure for nominating the public member. Each of the following subdivisions of the production area shall be represented by at least one member and one alternate member, each of whom shall be a grower, or an employee, agent, or duly authorized representative of a grower, in the designated district of the production area:

(a) District 1: The States of Massachusetts, Rhode Island and Connecticut;

(b) District 2: The State of New Jersey and Long Island in the State of New York;

(c) District 3: The States of Wisconsin, Michigan, and Minnesota; and

(d) District 4: The States of Oregon and Washington.

[27 FR 8101, Aug. 15, 1962, as amended at 43 FR 29765, July 11, 1978]

§ 929.21 Term of office.

The term of office of each member and alternate member of the committee shall be for 2 years beginning August 1 and ending on the second succeeding July 31. Members and alternate members shall serve in such capacity for the portion of the term of office for which they are selected and have qualified and until their respective successors are selected and have qualified.

[38 FR 29800, Oct. 29, 1973]

§ 929.22 Nomination.

(a) *Initial members.* Nominations for each of the initial members and alternate members may be submitted, not later than 10 days after the effective date of this part, to the Secretary by individual growers or groups of growers.

(b) *Successor members.* (1) Any cooperative marketing organization that handled more than two-thirds of the total volume of cranberries produced during the fiscal period during which nominations for membership on the committee are made, or the growers affiliated therewith, shall nominate four or more qualified persons for members and four or more qualified persons for alternate members of the committee. At least one such nominee for member and one such nominee for an alternate member shall represent growers in the State of Oregon and the State of Washington. The names and addresses of such nominees shall be submitted to the Secretary not

later than July 1 of each even-numbered year.

(2) The committee shall hold or cause to be held, not later than July 1, of each even-numbered year, meetings of growers in Districts 1, 2, and 3, other than those affiliated with the cooperative marketing organization designated in paragraph (b)(1) of this section, to elect nominees for member and alternate member positions on the committee.

(i) With respect to such meeting in District 3, eligible growers in District 4 shall be permitted to attend the meeting and participate in the selection of nominees. Such growers shall be eligible to be nominated for and serve as member or alternate member. Eligible growers in District 4 who do not attend the nomination meeting shall be afforded an opportunity to participate in the selection of nominees by mail. Selection of the nominee for member and the nominee for alternate member from Districts 3 and 4 shall be on the basis of the total vote of the eligible growers who attended the meeting plus any mail ballots cast by District 4 growers.

(ii) Except as hereinbefore provided, the growers in each such district who are present at the meeting, including District 4 growers who are present at the District 3 meeting, shall nominate one or more qualified persons for member and one or more qualified persons for alternate member of the committee. The names and addresses of such nominees shall be submitted to the Secretary not later than July 1 of each even-numbered year. The committee shall prescribe such procedure for the conduct of nomination meetings and for the submission of names of candidates and voting by mail by District 4 growers as shall be fair and equitable to all persons concerned.

(3) Except as set forth in paragraph (b)(2) of this section, growers shall only participate in the nomination of members and alternate members to represent the district in which they produced cranberries.

(4) When voting for nominees, each grower shall be entitled to cast only one vote on behalf of himself, his agents, subsidiaries, affiliates, and representatives for each position to be filled.

[27 FR 8101, Aug. 15, 1962, as amended at 33 FR 11640, Aug. 16, 1968; 38 FR 29800, Oct. 29, 1973]

§ 929.23 Selection.

(a) *Initial members.* From the nominations made pursuant to § 929.22(a), or from other qualified persons, the Secretary shall select the initial members of the committee and an alternate for each such member on the basis of the representation provided for in § 929.20 and in paragraph (b) of this section.

(b) *Successor members.* From the nominations made pursuant to § 929.22(b)(1), or from other qualified persons, the Secretary shall select four members of the committee and an alternate for each such member. From the nomination made pursuant to § 929.22(b)(2), or from other qualified persons, the Secretary shall select three members of the committee and an alternate for each such member.

[27 FR 8101, Aug. 15, 1962, as amended at 38 FR 29801, Oct. 29, 1973]

§ 929.24 Failure to nominate.

If nominations are not made within the time and in the manner prescribed in § 929.22, the Secretary may, without regard to nominations, select the members and alternate members of the committee on the basis of representation provided for in §§ 929.20 and 929.23.

§ 929.25 Acceptance.

Any person selected by the Secretary as a member or as an alternate member of the committee shall qualify by filing a written acceptance with the Secretary promptly after being notified of such selection.

§ 929.26 Vacancies.

To fill any vacancy occasioned by the failure of any person selected as a member or as an alternate member of the committee to qualify, or in the event of the death, removal, resignation, or disqualification of any member or alternate member of the committee, a successor for the unexpired term of such member or alter-

nate member of the committee shall be nominated and selected in the manner specified in §§ 929.22 and 929.23. If the names of nominees to fill any such vacancy are not made available to the Secretary within a reasonable time after such vacancy occurs, the Secretary may fill such vacancy without regard to nominations, which selection shall be made on the basis of representation provided for in §§ 929.20 and 929.23.

§ 929.27 Alternate members.

An alternate member of the committee, during the absence of the member for whom he is an alternate, shall act in the place and stead of such member and perform such other duties as assigned. In the event of the death, removal, resignation, or disqualification of a member, his alternate shall act for him until a successor for such member is selected and has qualified. In the event both a grower member of the committee and his alternate are unable to attend a committee meeting, the committee may designate any other grower alternate member to serve in such member's place and stead at that meeting: *Provided,* That not more than four members and alternate members selected from those nominated pursuant to § 929.22(b)(1) shall serve as members at the same meeting: *And provided, further,* That grower alternates shall not serve in place of an absent non-industry member.

[27 FR 8101, Aug. 15, 1962, as amended at 43 FR 29765, July 11, 1978]

§ 929.30 Powers.

The committee shall have the following powers:

(a) To administer the provisions of this part in accordance with its terms;

(b) To receive, investigate, and report to the Secretary complaints of violations of the provisions of this part;

(c) To make and adopt rules and regulations to effectuate the terms and provisions of this part; and

(d) To recommend to the Secretary amendments to this part.

§ 929.31 Duties.

The committee shall have, among others, the following duties:

(a) To select a chairman and such other officers as may be necessary, and to define the duties of such officers;

(b) To appoint such employees, agents, and representatives as it may deem necessary and to determine the compensation and to define the duties of each;

(c) To submit to the Secretary as soon as practicable after the beginning of each fiscal period a budget for such fiscal period, including a report in explanation of the items appearing therein and a recommendation as to the rate of assessment for such period;

(d) To keep minutes, books, and records which will reflect all of the acts and transactions of the committee and which shall be subject to examination by the Secretary;

(e) To prepare periodic statements of the financial operations of the committee and to make copies of each such statement available to growers and handlers for examination at the office of the committee;

(f) To cause its books to be audited by a competent public accountant at least once each fiscal year and at such times as the Secretary may request;

(g) To act as intermediary between the Secretary and any grower or handler;

(h) To investigate and assemble data on the growing, handling, and marketing conditions with respect to cranberries;

(i) To submit to the Secretary the same notice of meetings of the committee as is given to its members;

(j) To submit to the Secretary such available information as he may request; and

(k) To investigate compliance with the provisions of this part.

§ 929.32 Procedure.

(a) Five members of the committee, or alternates acting for members, shall constitute a quorum and any action of the committee shall require at least five concurring votes: *Provided,* That if the committee is increased by the addition of a public member and such

public member or alternate is present at a meeting, 6 members shall constitute a quorum and any action of the committee on which the public member votes shall require 6 concurring votes. If the public member abstains from voting on any particular matter, 5 concurring votes shall be required for an action of the committee.

(b) The committee may vote by telephone, telegraph, or other means of communication, and any votes so cast shall be confirmed promptly in writing: *Provided,* That if an assembled meeting is held, all votes shall be cast in person.

(c) All assembled meetings of the committee shall be open to growers and handlers. The committee shall publish notice of such meetings in such newspapers as it deems appropriate and shall mail notice of such meetings to each grower and handler who has filed his name and address with the committee for such purpose.

[27 FR 8101, Aug. 15, 1962, as amended at 43 FR 29765, July 11, 1978]

§ 929.33 Expenses and compensation.

The members of the committee, and alternates when acting as members, shall serve without compensation but shall be reimbursed for necessary expenses, as approved by the committee, incurred by them in the performance of their duties under this part. The committee at its discretion may request the attendance of one or more alternates at any or all meetings, notwithstanding the expected or actual presence of the respective members, and may pay expenses, as aforesaid.

Expenses and Assessments

§ 929.40 Expenses.

The committee is authorized to incur such expenses as the Secretary finds are reasonable and likely to be incurred by the committee for its maintenance and functioning and to enable it to exercise its powers and perform its duties in accordance with the provisions hereof. The funds to cover such expenses shall be paid to the committee by handlers in the manner prescribed in § 929.41.

§ 929.41 Assessments.

(a) As his pro rata share of the expenses which the Secretary finds are reasonable and likely to be incurred by the committee during a fiscal period, each handler shall pay to the committee, upon demand, assessments on all cranberries he handles as the first handler thereof, during such period, except as provided in § 929.55. The payment of assessments for the maintenance and functioning of the committee may be required under this part throughout the period it is in effect irrespective of whether particular provisions thereof are suspended or become inoperative.

(b) The Secretary shall fix the rate of assessment to be paid by each handler during a fiscal period in an amount designed to secure sufficient funds to cover the expenses which may be incurred during such period and to accumulate and maintain a reserve fund equal to approximately one fiscal period's expenses. At any time during or after the fiscal period, the Secretary may increase the rate of assessment in order to secure sufficient funds to cover any later finding by the Secretary relative to the expenses which may be incurred. Such increase shall be applied to all cranberries handled during the applicable fiscal period. In order to provide funds for the administration of the provisions of this part during the first part of a fiscal period before sufficient operating income is available from assessments, the committee may accept the payment of assessments in advance, and may also borrow money for such purposes.

(c) If a handler does not pay his assessment within the period of time prescribed by the committee, the assessment may be increased by either or both a late payment charge and an interest charge at rates prescribed by the committee, with the approval of the Secretary.

[27 FR 8101, Aug. 15, 1962, as amended at 38 FR 29801, Oct. 29, 1973]

§ 929.42 Accounting.

(a) If, at the end of a fiscal period, the assessments collected are in excess of expenses incurred, the committee,

with the approval of the Secretary, may carryover such excess into subsequent fiscal periods as a reserve: *Provided*, That funds already in the reserve do not exceed approximately one fiscal period's expenses. Such reserve funds may be used (1) to cover any expenses authorized by this part and (2) to cover necessary expenses of liquidation in the event of termination of this part. If any such excess is not retained in a reserve, it shall be refunded proportionately to the handlers from whom the excess was collected. Upon termination of this part, any funds not required to defray the necessary expenses of liquidation shall be disposed of in such manner as the Secretary may determine to be appropriate; *Provided*, That to the extent practical, such funds shall be returned pro rata to the persons from whom such funds were collected.

(b) All funds received by the committee pursuant to the provisions of this part shall be used solely for the purpose specified in this part and shall be accounted for in the manner provided in this part. The Secretary may at any time require the committee and its members to account for all receipts and disbursements.

Research

§ 929.45 Marketing research and development.

The committee, with the approval of the Secretary, may establish or provide for the establishment of marketing research and development projects designed to assist, improve, or promote the marketing, distribution, and consumption of cranberries. The expense of such projects shall be paid from funds collected pursuant to § 929.41.

Regulations

§ 929.46 Marketing policy.

(a) Each year prior to May 1 the committee shall estimate the marketable quantity for the following crop year.

(b) As soon as practicable after August 1 of each crop-year and prior to making any recommendations pursuant to paragraphs (b) (7) and (8) of this section or to § 929.51, the committee shall submit to the Secretary a report setting forth its marketing policy for the crop-year. Such marketing policy shall contain the basis therefor and information relating to:

(1) The estimated total production of cranberries;

(2) The expected general quality of such cranberry production;

(3) The estimated carryover, as of September 1, of frozen cranberries and other cranberry products;

(4) The expected demand conditions for cranberries in different market outlets;

(5) Supplies of competing commodities;

(6) Trend and level of consumer income;

(7) The recommended desirable total marketable quantity of cranberries including a recommended adequate carryover into the following crop year of frozen cranberries and other cranberry products;

(8) Regulation pursuant to § 929.52 expected to be recommended by the committee during the crop year together with its recommendation of the free and restricted percentages and beginning with the 1974-75 crop year, the recommended allotment percentages, if any, for the crop year; and

(9) Other factors having a bearing on the marketing of cranberries.

[33 FR 11640, Aug. 16, 1968, as amended at 38 FR 29801, Oct. 29, 1973]

§ 929.47 Preliminary regulation.

(a) Beginning with the 1968-69 crop year, and continuing for each crop year thereafter through August 31, 1974, no handler shall handle, as the first handler thereof, cranberries purchased by him from a grower or acquired by him for handling for the account of a grower until he has determined the identity of the grower and the quantity of cranberries attributed to such grower. The handler shall furnish such information to the committee at such times and in such forms as the committee, with the approval of the Secretary, may request.

(b) So that each producer may qualify for a base quantity, pursuant to § 929.48, the committee shall furnish each producer early in each calendar

year beginning in 1969, and as soon as practicable after the effective date of the amendment for the 1968 calendar year, a form to be filed with the committee whereon the producer reports the location of his bog(s), the acreage of cranberries he intends to harvest, and such other information as the committee needs to establish a base quantity for such producer.

[33 FR 11641, Aug. 16, 1968]

§ 929.48 Base quantities.

(a) *Determination of base quantities.* (1) If the Secretary finds that the grower allotment program will tend to effectuate the declared policy of the act and that the six crop years 1968-69 through 1973-74 constitute a representative period, he shall announce his findings by March 1, 1974. The basis for the findings with respect to the representative period shall be in terms of producer sales of cranberries from acreage established prior to the effective date of this amendment. Should the Secretary make the aforesaid finding, the committee shall compute a base quantity for each qualified grower. Such computation shall be made and the results thereof made known to each respective grower not later than May 1, 1974. The base quantity shall be, except as otherwise provided in this paragraph, a quantity of cranberries equal to that obtained by multiplying the grower's established cranberry acreage as of February 1, 1974, established prior to the effective date of this amendment by his average per acre sales made from that acreage during the 2 years, within the 6-year period, during which his greatest sales were made: *Provided,* That if such acreage was not under the control of such grower during the entire period 1968-69 through 1973-74, the grower having control on February 1, 1974, shall be issued a base quantity on the basis of sales made from such acreage. Persons who, prior to June 21, 1968, had made firm and substantial commitments for the production of cranberries but who would have no base quantities as determined on representative period sales or whose base quantities would not be representative of such commitments, may file an application with the committee for adjustment of or a new base quantity. Accompanying the request, the person shall submit information to establish proof of commitment, and such other information as may be required to provide full details to the committee so it may reach a fair and equitable decision in this matter. Commitments made by each such person shall be finalized so that any base quantity relating to such commitments will reflect only the sales made from such acreage during the representative period. The committee shall, by rules and regulations approved by the Secretary, consider each such request, and, if appropriate, provide for the assignment or adjustment of base quantities to such producers consistent with such commitments and as will be equitable to all growers. Such determination and considerations appertaining thereto, shall be subject to review by the Secretary.

(2) In accordance with this paragraph and based on reports of handlers, certifications by growers, and other information, the committee shall establish each grower's base quantity and, except as hereinafter provided, assign such base quantity to such grower.

(3) Beginning with January 1, 1966, and through the 1973-74 crop year, if a grower loses cranberry acreage during the period due to unusual circumstances beyond his control, such as any power of eminent domain, he shall be permitted to relocate cranberry acreage within 4 years from time of loss.

The Committee shall compute a base quantity for such grower. Such computed base quantity shall not be greater than the base quantity for such producer had his base quantity been computed from sales made from acreage lost. In computing such base quantity the committee shall consider, among other things, the following factors: (i) Previous crop records on the original acreage; (ii) potential for improvement of the original acreage up to 1974; (iii) production from like acreage in the area of relocation; and (iv) such other factors as are relevant to the computation.

(b)(1) A base quantity reserve equal to 2 percent of the total base quantities shall be established annually: *Provided,* That upon recommendation of the committee the Secretary may increase or decrease such percentage except in no event shall the reserve be less than 2 percent. Such reserve shall include any base quantity that becomes available due to any reduction or invalidation because of non-use of base quantity under paragraph (b)(4) of this section. Such reserve shall be used for the issuance of base quantities to new producers and adjustments in base quantities for existing producers with 25 percent being made available for new producers and 75 percent available for adjustments for existing producers. Any unallocated portion of the 25 percent available to new producers may at the discretion of the committee be prorated among eligible existing producers on an equitable basis.

(2) The committee shall, subject to approval of the Secretary; establish rules and procedures governing the issuance of base quantities under paragraph (b)(1) of this section. Such rules shall define the terms "new producer" and "existing producer" and specify standards for equitable and thorough consideration of pertinent factors relating to each case, including but not limited to, on-site inspection of applicant's acreage, past production of cranberries by applicant, acreage planted, average yields, and other economic and marketing factors.

(3) Each person filing an application hereunder for new base quantity or adjustment in an established base quantity shall be notified by the committee of its determination thereon.

(4) A condition for the continuing validity of a producer's base quantity is production of cranberries thereunder in a proprietary capacity. If no bona fide effort is made to produce and sell cranberries thereunder for five consecutive seasons, commencing with the 1978–79 season, the base quantity may be reduced or declared invalid due to lack of use and cancelled at the end of the fifth season of nonproduction. The committee shall establish criteria, subject to approval by the Secretary, whereby the committee may determine whether a bona fide effort has been made to produce and sell cranberries produced on the producer's own acreage.

(5) Each producer shall file with the committee such reports as may be necessary for the committee to perform its duties under this section.

(c) *Review of committee determinations.* The committee shall recommend to the Secretary rules and regulations for review of its determination pursuant to this section, and the Secretary shall, on the basis of such recommendation or other available information, issue rules and regulations governing such review.

[33 FR 11641, Aug. 16, 1968, as amended at 43 FR 29765, July 11, 1978]

§ 929.49 Marketable quantity, allotment percentage, and annual allotment.

(a) *Marketable quantity and allotment percentage.* Beginning with 1974–75 crop year, if the Secretary finds from the recommendation of the committee or from other available information that limiting the quantity of cranberries that may be purchased from or handled on behalf of growers would tend to effectuate the declared policy of the act, he shall determine and establish the marketable quantity for such crop year. The marketable quantity shall be apportioned among growers by applying the allotment percentage to each grower's base quantity, established pursuant to § 929.48. The allotment percentage shall be established by the Secretary and shall equal the marketable quantity divided by the total of all growers' base quantities. Except as provided in paragraph (c) of this section, no handler shall purchase or handle on behalf of any grower cranberries not within such grower's annual allotment. In any crop year beginning with the crop year commencing September 1, 1974, in which the production of cranberries is estimated by the committee to be equal to or less than its recommended marketable quantity, the committee may recommend and the Secretary may increase or suspend the allotment percentage applicable to any year. In the event it is found that the market demand is greater than

the marketable quantity previously set, the committee may recommend and the Secretary may increase such quantity.

(b) *Issuance of annual allotments.* The committee shall require each grower to qualify for his allotment by filing with the committee, on or before February 1, 1974, and by the same date each year thereafter, a CMC form wherein the grower states such information as where he intends to produce his annual allotment, the acreage he intends to harvest, changes in location, if any, and such other information, including a copy of any lease agreement, as is necessary for the committee to administer this part. On or before May 1, 1974, and by the same date each year thereafter, the committee shall issue to each grower an annual allotment determined by applying the allotment percentage established pursuant to paragraph (a) of this section to the grower's base quantity.

(c) *Filling deficiencies in annual allotments.* When a grower, beginning in 1974, does not produce cranberries equal to his computed annual allotment, he may (1) fill any deficit in his annual allotment by obtaining cranberries from another grower who has produced a quantity of cranberries in excess of his computed annual allotment; (2) transfer any unused portion of his allotment to another grower; or (3) transfer his unused allotment to a handler who shall allocate the unused allotment to another grower or growers with insufficient allotment. As a condition to any such transfer each grower or handler shall furnish a full report to each such transaction to the committee, including the names of the parties, the quantity involved in the transaction, and such other information as will enable the committee to administer this provision. The committee, with the approval of the Secretary, may modify the provisions with respect to filling deficiencies.

(d) A grower or handler with any deficiency of allotment should notify the committee of such deficiency. As a service to growers and handlers to expedite any loan transactions, the committee shall act as a clearing house of information with respect to growers wanting to loan and growers wanting to borrow all or part of an allotment. Such information shall be maintained in the committee office and made available to any producer or handler who requests it.

[33 FR 11641, Aug. 16, 1968]

§ 929.50 Transfers.

(a) *Of location.* A grower may transfer from the acreage to which the cranberries are attributed on which his base quantity was established to other land which he owns. If the grower is leasing the acreage to which the cranberries are attributed on which his base quantity was established, he may transfer in accordance with the lease contract or with the consent of the owner. The committee shall, by such means as are provided in § 929.39(b) obtain information as to the location(s) where such producer intends to produce his annual allotment.

(b) *To another grower.* A grower who owns the land to which the cranberries are attributed on which the base quantity was established may transfer all or part of his base quantity to another grower. If the transferor is not the owner of the bog land, transfer of the base quantity shall be in accordance with the terms of the agreement between the lessee and the lessor. In the absence of a contract, a transfer shall not be valid nor shall an annual allotment be granted to the potential transferee unless the bog owner consents to the transfer. No transfer shall be recognized by the committee except the transferee and the transferor notifying the committee in writing.

[33 FR 11642, Aug. 16, 1968; 34 FR 2108, Feb. 13, 1969]

§ 929.51 Recommendations for regulation.

(a) Whenever the committee deems it advisable to regulate the handling of cranberries in the manner provided in § 929.52, it shall so recommend to the Secretary.

(b) In arriving at its recommendations for regulation pursuant to paragraph (a) of this section, the committee shall give consideration to current information with respect to the factors affecting the supply of and

demand for cranberries during the period or periods when it is proposed that such regulation should be made effective. With each such recommendation for regulation, the committee shall submit to the Secretary the data and information on which such recommendation is predicated and such other available information as the Secretary may request.

§ 929.52 Issuance of regulations.

(a) The Secretary shall regulate, in the manner specified in this section, the handling of cranberries whenever he finds, from the recommendations and information submitted by the committee, or from other available information, that such regulation will tend to effectuate the declared policy of the act. Such regulation shall limit the total quantity of cranberries which may be handled during any fiscal period by fixing the free and restricted percentages, which percentages shall be applied to cranberries acquired during such fiscal period in accordance with § 929.54.

(b) The committee shall be informed immediately of any such regulation issued by the Secretary, and the committee shall promptly give notice thereof to handlers.

§ 929.53 Modification, suspension, or termination of regulations.

(a) In the event the committee at any time finds that, by reason of changed conditions, any regulations issued pursuant to § 929.52 should be modified, suspended, or terminated, it shall so recommend to the Secretary.

(b) Whenever the Secretary finds, from the recommendations and information submitted by the committee or from other available information, that a regulation should be modified, suspended, or terminated in order to effectuate the declared policy of the act, he shall modify, suspend, or terminate such regulation: *Provided,* That no such modification shall increase the restricted percentage previously established for the then current fiscal year. If the Secretary finds that a regulation obstructs or does not tend to effectuate the declared policy of the act, he shall suspend or terminate such regulation.

§ 929.54 Withholding.

(a) Whenever the Secretary has fixed the free and restricted percentages for any fiscal period, as provided for in § 929.52(a), each handler shall withhold from handling a portion of the cranberries he acquires during such period: *Provided,* That such withholding requirements shall not apply to any lot of cranberries for which such withholding requirement previously has been met by another handler in accordance with § 929.55. The withheld portion shall be equal to the sum of the products obtained by multiplying each of the following quantities, as applicable, by the restricted percentage:

(1) The quantity of screened cranberries acquired:

(2) The quantity of screened cranberries obtained at the time unscreened lots of cranberries are screened: *Provided,* That, if the cranberries have not been screened by a date specified by the committee, with the approval of the Secretary, as the date by which each handler shall have met the withholding requirement, the quantity of screened cranberries shall be determined as set forth in paragraph (a)(3) of this section; and

(3) The quantity of screened cranberries contained in unscreened lots of cranberries acquired (i) which are destined for disposition without screening, or (ii) but which have not been screened prior to the date referred to in paragraph (a)(2) of this section. The committee, with the approval of the Secretary, shall prescribe uniform rules to be followed in determining the quantity of screened cranberries in each lot of unscreened cranberries.

(b) The committee, with the approval of the Secretary, shall prescribe the manner in which, and date or dates during the fiscal period by which, handlers shall have complied with the withholding requirements specified in paragraph (a) of this section.

(c) Withheld cranberries shall meet such standards of grade, size, quality, or condition as the committee, with the approval of the Secretary, may prescribe. All such cranberries shall be inspected by the Federal or Federal-State Inspection Service. A certificate

of such inspection shall be issued which shall show, among other things, the name and address of the handler, the number and type of containers in the lot, the location where the lot is stored, identification marks, including lot stamp, if used, and a certification of the quantity of cranberries in such lot that meet the prescribed standards. Promptly after inspection and certification, each such handler shall submit, or cause to be submitted, to the committee at the place designated by the committee a copy of the certificate of inspection issued with respect to such cranberries.

(d) Any handler who withholds from handling a quantity of cranberries in excess of that required pursuant to paragraph (a) of this section shall have such excess quantity credited toward the next fiscal year's withholding obligation, if any, of such handler: *Provided*, That such credit shall be applicable only (1) if the restricted percentage established pursuant to § 929.52 was modified pursuant to § 929.53; (2) to the extent such excess was disposed of prior to such modification; and (3) after such handler furnishes the committee with such information as it prescribes regarding such withholding and disposition.

[27 FR 8101, Aug. 15, 1962, as amended at 29 FR 6617, May 21, 1964; 38 FR 29801, Oct. 29, 1973]

§ 929.55 Interhandler transfer.

(a) Transfer of cranberries from one handler to another may be made without prior notice to the committee. If such transfer is made between handlers who have packing or processing facilities located within the production area, the assessment and withholding obligations provided under this part shall be assumed by the handler who agrees to meet such obligation. If such transfer is to a handler whose packing or processing facilities are outside the production area, such assessment and withholding obligations shall be met by the handler within the production area.

(b) All handlers shall report all such transfers to the committee, on a form provided by the committee, twice a year each at a time specified by the committee.

[38 FR 29801, Oct. 29, 1973]

§ 929.56 Special provisions relating to withheld (restricted) cranberries.

(a) Except as otherwise directed by the Secretary, as near as practicable to the beginning of the marketing season of each fiscal period with respect to which the marketing policy proposes regulation pursuant to § 929.52(a), the committee shall determine the amount per barrel each handler shall deposit with the committee for it to release to him, in accordance with paragraph (b) of this section, all or part of the cranberries he is withholding; and the committee shall give notice of such amount of deposit to handlers. Such notice shall state the period during which such amount of deposit shall be in effect. Whenever the committee determines that, by reason of changed conditions or otherwise, a different amount should thereafter be deposited for the release of withheld cranberries, it shall give notice to handlers of the new amount and the effective period thereof. Each determination as to the amount of deposit shall be on the basis of the committee's evaluation of the following factors: (1) The prices at which growers are selling cranberries to handlers, (2) the prices at which handlers are selling fresh market cranberries to dealers, (3) the prices at which cranberries are being sold for processing into products, and (4) the prices the committee has paid to purchase cranberries to replace released cranberries in accordance with this section.

(b) Any handler may make a written request to the committee for the release of all or part of the cranberries he is withholding from handling pursuant to § 929.54(a). Each such request shall state, in addition to all other information as may be prescribed by the committee, the quantity of cranberries for which release is requested and shall be accompanied by a deposit (in cash, or a cashier's or certified check made payable to the Cranberry Marketing Committee) in an amount equal to the product of the number of barrels stated in the request multiplied by the then effective amount per barrel to be deposited. If the committee determines such request is properly

filled out, is accompanied by the required deposit, and contains a certification that the handler is withholding such cranberries, it shall release to such handler the quantity of cranberries specified in his request. Such determination shall be made not later than 72 hours after the request is received by the committee.

(c) Funds deposited for the release of withheld cranberries, pursuant to paragraph (a) of this section, shall be used by the committee to purchase from handlers unrestricted (free percentage) cranberries in an aggregate amount as nearly equal to, but not in excess of, the total quantity of the released cranberries as it is possible to purchase to replace the released cranberries. All handlers shall be given an opportunity to participate in such purchase. If a larger quantity is offered than can be purchased, the purchases shall be made at the lowest prices possible. If two or more handlers offer at the same price, purchases from such handlers shall be in proportion to the quantity of their respective offerings insofar as such division is practicable. The cranberries so purchased shall be disposed of by the committee as restricted cranberries in accordance with § 929.57. Any funds received by the committee for cranberries so disposed of, which are in excess of the costs incurred by the committee in making such disposition, shall be paid or credited proportionately to handlers on the basis of the volume of cranberries withheld by each handler.

(d) In the event any portion of the funds deposited with the committee pursuant to paragraph (a) of this section cannot, for reasons beyond the committee's control, be expended to purchase unrestricted (free percentage) cranberries to replace those released, such unexpended funds shall, after deducting expenses incurred by the committee in connection with the purchase and disposition of cranberries pursuant to paragraph (c) of this section, be offered and paid or credited proportionately to handlers on the basis of the volume of cranberries withheld by each handler. In the event that the offer is not accepted or directions given by a handler to credit the funds within 90 days, the funds will accrue to the committees's general account.

(e) Cranberries purchased by the committee to replace released cranberries shall be inspected and shall meet such standards as are prescribed for withheld cranberries.

(f) Inspection of withheld cranberries released to a handler is not required.

[29 FR 6618, May 21, 1964, as amended at 38 FR 29801, Oct. 29, 1973; 43 FR 29765, July 11, 1978]

§ 929.57 Outlets for restricted cranberries.

(a) Except as provided in this section and in § 929.56, cranberries withheld from handling may be disposed of only through diversion to such outlets as the committee, with the approval of the Secretary, finds are noncompetitive to outlets for unrestricted (free percentage) cranberries.

(b) The storage and disposition of all cranberries withheld from handling shall be subject to the supervision and accounting control of the committee.

§ 929.58 Exemption.

(a) Upon the basis of the recommendation and information submitted by the committee, or from other available information, the Secretary may relieve from any or all requirements pursuant to this part the handling of cranberries in such minimum quantities as the committee, with the approval of the Secretary, may prescribe.

(b) The committee, with the approval of the Secretary, shall prescribe such rules, regulations, and safeguards as it may deem necessary to ensure that cranberries handled under the provisions of this section are handled only as authorized.

Reports and Records

§ 929.60 Reports.

(a) *Inventory.* Each handler shall, upon request of the committee, file promptly with the committee a certified report, showing such information as the committee shall specify with respect to any cranberries and cranberry products which were held by him on such date as the committee may designate.

(b) *Receipts.* Each handler shall, upon request of the committee, file promptly with the committee a certified report as to each quantity of cranberries acquired during such period as may be specified, and the place of production.

(c) *Handling reports.* Each handler shall, upon request of the committee, file promptly with the committee a certified report as to the quantity of cranberries handled by him during any designated period or periods.

(d) *Withholding.* Each handler shall, upon request of the committee, file promptly with the committee a certified report showing, for such period as the committee may specify, the total quantity of cranberries withheld from handling, in accordance with § 929.54, the portion of such withheld cranberries on hand, and the quantity and manner of disposition of any such withheld cranberries disposed of.

(e) *Other reports.* Upon the request of the committee, with the approval of the Secretary, each handler shall furnish to the committee such other information with respect to the cranberries acquired and disposed of by such handler as may be necessary to enable the committee to exercise its powers and perform its duties under this part.

§ 929.61 Records.

Each handler shall maintain such records of all cranberries acquired, withheld from handling, handled, and otherwise disposed of as will substantiate the required reports and as may be prescribed by the committee. All such records shall be maintained for not less than three years after the termination of the crop year in which the transactions occurred or for such lesser period as the committee may direct.

§ 929.62 Verification of reports and records.

For the purpose of assuring compliance and checking and verifying records and the reports filed by handlers, the committee, through its duly authorized agents, shall have access to any premises where applicable records are maintained, where cranberries are received, stored, handled, and otherwise disposed of and, at any time during reasonable business hours, shall be permitted to inspect such handler premises and any and all records of such handlers with respect to matters within the purview of this part.

§ 929.63 Confidential information.

All reports and records furnished or submitted by handlers to the committee and its authorized agents which include data or information constituting a trade secret or disclosing the trade position, financial condition, or business operations of the particular handler from whom received, shall be received by and at all times kept in the custody and under the control of one or more employees of the committee, who shall disclose such information to no person other than the Secretary.

Miscellaneous Provisions

§ 929.65 Compliance.

Except as provided in this part, no person shall handle cranberries, the handling of which has been prohibited by the Secretary in accordance with the provisions of this part; and no person shall acquire or handle cranberries except in conformity with the provisions of this part and the regulations issued hereunder.

§ 929.66 Right of the Secretary.

The members of the committee (including successors and alternates), and any agents, employees, or representatives thereof, shall be subject to removal or suspension by the Secretary at any time. Each and every regulation, decision, determination, or other act of the committee shall be subject to the continuing right of the Secretary to disapprove of the same at any time. Upon such disapproval, the disapproved action of the committee shall be deemed null and void, except as to acts done in reliance thereon or in accordance therewith prior to such disapproval by the Secretary.

§ 929.67 Effective time.

The provisions of this part, and of any amendment thereto, shall become effective at such time as the Secretary may declare above his signature and

shall continue in force until terminated in one of the ways specified in § 929.68.

§ 929.68 Termination.

(a) The Secretary may at any time terminate the provisions of this part by giving at least one day's notice by means of a press release or in any other manner in which he may determine.

(b) The Secretary shall terminate or suspend the operation of any or all of the provisions of this part whenever he finds that such provisions do not tend to effectuate the declared policy of the act.

(c) The Secretary shall terminate the provisions of this part whenever he finds by referendum or otherwise that such termination is favored by a majority of the growers: *Provided*, That such majority has, during the current fiscal year, produced more than 50 percent of the volume of the cranberries which were produced within the production area. Such termination shall become effective on the last day of July subsequent to the announcement thereof by the Secretary.

(d) The Secretary shall conduct a referendum during the month of May 1975 to ascertain whether continuance of this part is favored by the growers as set forth in paragraph (c) of this section. The Secretary shall conduct such a referendum during the month of May of every fourth year thereafter.

(e) The provisions of this part shall, in any event, terminate whenever the provisions of the act authorizing them cease to be effective.

[27 FR 8101, Aug. 15, 1962, as amended at 33 FR 11642, Aug. 16, 1968]

§ 929.69 Proceedings after termination.

(a) Upon the termination of the provisions of this part, the committee shall, for the purpose of liquidating the affairs of the committee, continue as trustees of all the funds and property then in its possession, or under its control, including claims for any funds unpaid or property not delivered at the time of such termination.

(b) The said trustees shall (1) continue in such capacity until discharged by the Secretary; (2) from time to time account for all receipts and disbursements and deliver all property on hand, together with all books and records of the committee and of the trustees, to such persons as the Secretary may direct; and (3) upon the request of the Secretary, execute such assignments or other instruments necessary or appropriate to vest in such person full title and right to all of the funds, property, and claims vested in the committee or the trustees pursuant thereto.

(c) Any person to whom funds, property, or claims have been transferred or delivered, pursuant to this section, shall be subject to the same obligation imposed upon the committee and upon the trustees.

§ 929.70 Effect of termination or amendment.

Unless otherwise expressly provided by the Secretary, the termination of this part or of any regulation issued pursuant to this part, or the issuance of any amendment to either thereof, shall not (a) affect or waive any right, duty, obligation, or liability which shall have arisen or which may thereafter arise in connection with any provision of this part or any regulation issued hereunder, or (b) release or extinguish any violation of this part or any regulation issued hereunder, or (c) affect or impair any rights or remedies of the Secretary or of any other person with respect to any such violation.

§ 929.71 Duration of immunities.

The benefits, privileges, and immunities conferred upon any person by virtue of this part shall cease upon its termination, except with respect to acts done under and during the existence of this part.

§ 929.72 Agents.

The Secretary may, by designation in writing, name any officer or employee of the United States, or name any agency or division in the United States Department of Agriculture, to act as his agent or representative in connection with any of the provisions of this part.

§ 929.73 Derogation.

Nothing contained in this part is, or shall be construed to be, in derogation or in modification of the rights of the Secretary or of the United States (a) to exercise any powers granted by the act or otherwise, or (b) in accordance with such powers, to act in the premises whenever such action is deemed advisable.

§ 929.74 Personal liability.

No member or alternate member of the committee and no employee or agent of the committee shall be held personally responsible, either individually or jointly with others, in any way whatsoever, to any person for errors in judgment, mistakes, or other acts, either of commission or ommission, as such member, alternate, employee, or agent, except for acts of dishonesty, willful misconduct, or gross negligence.

§ 929.75 Separability.

If any provision of this part is declared invalid or the applicability thereof to any person, circumstance, or thing is held invalid, the validity of the remainder of this part or the applicability thereof to any other person, circumstance, or thing shall not be affected thereby.

Subpart—Rules and Regulations

§ 929.101 Minimum exemption.

The requirements of § 929.41 *Assessments* and § 929.54 *Withholding* shall not apply to any handler in a fiscal year during which he handles not more than a total of 75 barrels of cranberries.

[36 FR 18852, Sept. 23, 1971]

§ 929.102 Procedure to determine quantity of screened cranberries in unscreened lots.

The determination pursuant to § 929.54 of the quantity of screened cranberries contained in an unscreened lot shall be made in accordance with the following procedure and on the basis of a sample of representative boxes comprising no less than 2 percent of the cranberries in the lot:

(a) The cranberries in the sample are cleaned to remove chaff, and the boxes of cleaned berries are weighed. The weight of the boxes themselves is then deducted to determine the weight of the cleaned berries. The weight of the cleaned berries is divided by the number of boxes in the sample to obtain the net weight of cleaned cranberries per box. The net weight is multiplied by the number of boxes in the lot to obtain the net weight of the berries in the unscreened lot.

(b) The cleaned berries are run through a separator, having a $^{9}/_{32}$ inch screen, and with the bounce boards in the lowest position.

(c) The berries from the lower three bounce boards are rerun through the separator.

(d) The berries from the upper four bounce boards are thoroughly mixed and a random cupful (approximately 1 pint) is used to determine, from a count of the sound and unsound berries, the percentage of sound berries in the lot.

(e) Such percentage is adjusted by increasing it by 5 percentage points but not to exceed a total of 100 percent. (This increase makes the sample comparable to lots of screened cranberries, as such lots generally contain an average of 5 percent unsound berries.)

(f) The net weight, as determined in accordance with paragraph (a) of this section, of the berries in the unscreened lot, is multiplied by the adjusted percentage to obtain the quantity of screened cranberries in the unscreened lot.

[28 FR 11611, Oct. 31, 1963]

§ 929.103 Inspection procedure.

(a) Inspection of withheld cranberries shall be limited to any plant, storage facility, or other location, within the production area where facilities suitable to the inspection service are available for sampling, weighing, and inspection of cranberries.

(b) The handler offering any lot of cranberries for inspection shall furnish the necessary labor and pay the costs of moving, weighing, and otherwise making available the sample the inspector chooses for inspection. The

size of the sample shall be determined by the inspector. In the case of inspection of a lot of unscreened cranberries, the sample shall be screened by the handler under the supervision of the inspector and the inspection certificate shall show the quantity of cranberries in such lot which meets the requirements established for withheld cranberries pursuant to § 929.54(c).

[28 FR 11611, Oct. 31, 1963]

§ 929.104 Outlets for restricted cranberries.

(a) Except as otherwise provided in paragraph (b)(2) of this section, after inspection pursuant to § 929.54(c), cranberries withheld from handling may, in accordance with § 929.57, be disposed of only through diversion in the following noncompetitive outlets but only if the requirements in paragraph (b) of this section also are complied with:

(1) Foreign countries, except Canada.

(2) Charitable institutions.

(3) Any nonhuman food use.

(4) Research and development projects dealing with dehydration, radiation, freeze drying, or freezing of cranberries, approved by the U.S. Department of Agriculture, for the development of foreing markets.

(b) The following requirements, as applicable, shall be met by the handler diverting the withheld cranberries in the noncompetitive outlets:

(1) Diversion to foreign countries except Canada: A copy of the on-board bill of lading showing the amount of cranberries loaded for export shall be submitted to the committee.

(2) Diversion to charitable institutions: A statement from the charitable institution showing the quantity of cranberries received and certifying that the cranberries will be consumed by the institution shall be submitted to the committee: *Provided*, That a handler may donate to any one charitable institution, exempt from the inspection and certification requirements prescribed under § 929.54(c), a quantity of cranberries not exceeding 25 barrels during any fiscal period: *Provided further*, That in addition to the statement specified above in this paragraph, each handler shall furnish to the committee a report certifying the quantity and destination of the cranberries so donated by him.

(3) Diversion to a nonhuman food use: Notification shall be given to the committee at least 48 hours prior to the disposition to enable the committee to supervise the disposition. If such disposition immediately follows inspection and is supervised by the inspector, no advance notice is necessary.

(4) Diversion to research and development projects: A report shall be given to the committee showing the project, quantity of cranberries, and date of disposition.

[28 FR 11611, Oct. 31, 1963, as amended at 36 FR 9496, May 26, 1971; 37 FR 5600, Mar. 17, 1972]

§ 929.105 Reporting.

(a) Each report required to be filed with the committee pursuant to §§ 929.6 and 929.48 shall be mailed to the committee office at Middleboro, Mass., or delivered to that office. If the report is mailed, it shall be deemed filed when postmarked.

(b) Certified reports shall be submitted to the committee by each handler not later than the 10th day of February, May, and August of each fiscal period showing: (1) The total quantity of cranberries the handler acquired and the total quantity of cranberries the handler handled from the beginning of the crop year through January 31, April 30, and July 31, respectively, and (2) the respective quantities of cranberries and cranberry products held by the handler on the 1st day of February, May, and August of each fiscal period.

[43 FR 29764, 29765, July 11, 1978]

§ 929.106 Fiscal period.

The fiscal period specified in § 929.6 of this part which began September 1, 1968, and ends on August 31, 1969, is changed to include the period of August 1, through August 31, 1968. Thereafter, the fiscal period will begin on September 1 and end on August 31 of the following year.

[33 FR 16492, Nov. 13, 1968]

§ 929.107 Basis for determining established cranberry acreage.

(a) To be classified as established cranberry acreage pursuant to §§ 929.16 and 929.48, all such acreage must presently be producing cranberries on a commercial basis or planted, in accordance with order provisions, so as to produce cranberries on a commercial basis. "Commercial crop" is synonymous with "commercial basis" and shall mean:

(1) Acreage on which a commercial crop of cranberries was produced, harvested, and sold at least once during the crop years 1965–66 through 1967–68, and the record of such sales as verified by the handler thereof, shall show that the cranberries were produced in a quantity of at least 15 barrels per acre; or

(2) Acreage that has a sufficient density of growing vines to show that such acreage can produce a commercial crop of at least 15 barrels an acre without replanting or renovation of any kind.

(b) So that the committee may properly identify established acreage, the grower shall furnish information to the committee, on forms furnished by it upon request, information sufficient to establish that he is the grower for the acreage involved. It shall be the responsibility of the Cranberry Marketing Committee to determine no later than August 31, 1969, by physical inspection or other means whether there is sufficient vine density for cranberry acreage to qualify as "established cranberry acreage" in accordance with paragraph (a)(2) of this section. In making such determination, the committee shall be guided by standards of comparison between the potential bog and present existing bogs in the same area.

(c) If the determination were that all or part of the acreage eligible under paragraph (a)(2) of this section does not have sufficient vine coverage to produce 15 barrels an acre, that portion without sufficient vine coverage will not qualify as established acreage under this section. In the event only a portion of an acreage has sufficient vine population and density to produce 15 barrels of cranberries an acre, such portion will qualify as established cranberry acreage pursuant to this section. Since such qualified portion of the acreage would be eligible for a base quantity, it must be definitely and permanently delineated.

(d) It shall be the responsibility of the grower to maintain adequate sales records to show actual sales from established acreage and submit such records to the committee separately from sales records pertaining to any other acreage. The report of sales must be filed by the grower no later than February 1 of the calendar year succeeding the crop year to which such sales pertain, except that such report of sales for the 1968 crop year shall be filed no later than July 1, 1969.

[34 FR 1304, Jan. 28, 1969]

§ 929.108 Firm and substantial commitment as used in determining base quantities.

(a)(1) Pursuant to § 929.48(a)(1), provision has been made for growers who did not meet the August 16, 1968, deadline for having established cranberry acreage, but who had made a "firm and substantial commitment" prior to June 21, 1968, so that sales from such acreage may be eligible for calculating the base quantity. In considering what constitutes a "firm and substantial commitment" in order to grant an extension of time in which to plant, the committee should consider the investment in time, money, or labor prior to June 21, 1968, on acreage for the purpose of producing cranberries, which acreage was not planted prior to August 16, 1968. Applications based solely on the acquisition of land or equipment, or a combination thereof, shall not automatically constitute a proper basis for the Committee to find that a firm and substantial commitment had been made.

(2) To receive an extension of time beyond August 16, 1968, in which to plant so as to be eligible for an adjustment or a new base quantity, as provided in § 929.48(a)(1), a grower shall submit proof to the committee which is satisfactory to show a "firm and substantial commitment" had been made. Such proof should include vouchers and sales slips, and records

of labor or other expenditures which were made on the specific acreage in question prior to June 21, 1968. Any other form of satisfactory proof shall be considered also. The grower shall file with the committee, on forms furnished by it, other information which may be necessary to substantiate his claim.

(b) To establish proof of commitment, the evidence submitted by the grower shall be in the form of a certified statement transmitted to the committee for its consideration. Such form shall include the following:

(1) The grower's name, address, and phone number;

(2) The location of the acreage and the date of acquisition;

(3) The total cranberry acreage planted prior to 1968;

(4) The total new acreage completed by August 16, 1968;

(5) The total acreage not completed by August 16, 1968;

(6) A statement of contractual labor or equipment used by the grower, including the name of the contractor, the date of the contract, and a copy of the contract;

(7) A list of the names of employees, if the grower employed his own labor force and equipment;

(8) Reasons why the acreage was not completed by August 16, 1968;

(9) A statement describing the work necessary to complete the unfinished bog, including an estimate of expenditures necessary to complete it, specifying the expected date of completion and the year the first crop will be harvested;

(10) A statement giving alternative uses to which the property might be put; and

(11) Any other factors or information which will assist the committee in determining whether to grant an extension of time for planting.

(c) In the event the committee determines an exception should be granted, it may grant the grower an extension of time beyond August 16, 1968, in which to plant vines on the acreage involved.

(d) In the event the grower is not satisfied with the determination of the committee as to whether to grant an extension, he may appeal such decision as provided for in § 929.48(c) of the order. Such extension of time will in no way affect the representative period during which the base quantity will be determined. All requests for an extension must be made to the committee not later than March 31, 1969, and in cases where extensions are granted, all work necessary to produce a crop on the acreage involved must be completed prior to August 1, 1969.

[34 FR 1304, Jan. 28, 1969]

§ 929.109 Unusual circumstances as used in determining base quantities.

"Unusual circumstances," as used in § 929.48(a)(3), shall include but not necessarily be limited to the taking of property under the power of eminent domain and also "Acts of God," such as an earthquake, seashore erosion, encroachment of sand dunes, saline contamination due to prolonged inundation, a forest fire, and any other circumstances which are beyond the grower's control and destroy the ability of a cranberry bog to produce cranberries to such an extent that the bog is found, in the judgment of the committee, to be permanently lost for commercial purposes. When a grower believes he has lost cranberry acreage due to "unusual circumstances" under the provisions of § 929.48, he shall apply and furnish information to the committee to sufficiently establish that "unusual circumstances" exist.

[34 FR 1304, Jan. 28, 1969]

§ 929.110 Transfers or sales of cranberry acreage during the representative period.

(a) Sales or transfers of cranberry acreage during the representative period shall be reported, in writing, by the transferor and transferee setting forth sales attributed to such acreage, to the committee at its office in Wareham, Mass., or at such other location as it may designate, not later than 30 days after the transaction has occurred.

(b) Upon transfer of all or a portion of a given acreage, the committee should be given certain specific information either on forms it will provide, or in statements provided by the par-

ties. The purchaser and seller must provide the following information:

(1) Crop records for the acreage involved;

(2) Annual production and sales for each year during the base period on the acreage involved, either in total, or for each individual parcel; and

(3) Such other information as the committee deems necessary.

(c) Cranberry acreage sold or transferred during the representative period shall be recognized in connection with the issuance of base quantities as follows:

(1) If a grower sells all of the acreage comprising the entity, all prior sales made during the representative period, shall accrue to the purchaser.

(2) If a grower sells only a portion of the acreage comprising the entity from which prior sales have been made during the representative period, the purchaser and the seller must agree as to the amount of sales attributed to each portion and both parties give notice thereof to the committee listing such sales separately by years. However, the sales attributed to each such portion shall not exceed the potential production, as determined by the committee, for such acreage at the time of transfer.

[34 FR 1304, Jan. 28, 1969]

§ 929.125 Committee review procedures.

Pursuant to § 929.48(c), growers may request, and the committee shall grant, a review of determinations made by the committee pursuant to § 929.48(a) and (b), in accordance with the following procedures:

(a) If a grower is dissatisfied with a determination made by the committee which affects him, he may submit to the committee within 30 days after he is notified of the determination, a request for a review by the committee of that determination, along with any materials which he feels are pertinent and a written argument if he so desires.

(b) The committee shall review its determination within a reasonable length of time taking into account all materials submitted by the grower in accordance with paragraph (a) of this section, and any other material which it deems pertinent. Thereupon, the committee shall make a redetermination, and notify the grower of its conclusions, accompanied by the reasons for its decision.

(c) If the grower is not satisfied with the subsequent decision of the committee, he may appeal, through the committee, to the Secretary, within 30 days after he is notified of the committee's findings. The committee shall promptly forward the entire file on the matter to the Secretary.

(d) The Secretary shall promptly review the decision of the committee as a result of its redetermination, and in doing so shall consider at least the following information:

(1) The complete file on the issue which was submitted by the committee in accordance with paragraph (c) of this section;

(2) Additional pertinent information submitted to the Secretary by the grower; and

(3) Additional pertinent information submitted to the Secretary by the committee.

(e) Upon completion of his review, the Secretary shall reach a decision with respect to the matter before him. He shall promptly notify all interested persons of his decision, and such decision shall be final.

[34 FR 1305, Jan. 28, 1969]

§ 929.142 Reserve.

(a) It is necessary and appropriate to establish and maintain a reserve in an amount not to exceed approximately one fiscal period's operational expenses to be used in accordance with the provisions of § 929.42 of the marketing agreement and this part, and

(b) Assessments collected for each of the fiscal periods ended July 31, 1963; July 31, 1965; July 31, 1966; and July 31, 1967, were in excess of expenses for such periods. The committee is hereby authorized to place excess funds in said reserve.

[28 FR 11052, Oct. 16, 1963, as amended at 32 FR 13253, Sept. 20, 1967. Redesignated at 44 FR 73011, Dec. 17, 1979]

§ 929.148 Assignment or adjustment of base quantities.

(a) The committee shall, as a basis for assigning or adjusting any base

quantity, consider the following factors:

(1) Crop and sales records on acreage from which the base quantity derives;

(2) Previous crop records on all other acreage, if any, under control of the grower;

(3) The grower's production trend from the beginning of the representative period 1968-69 through 1973-74 until the time of the committee's decision on any request for assignment or adjustment of the base quantity;

(4) The production trend, during the representative period 1968-69 through 1973-74, of the growing area adjacent to the acreage related to the base quantity under consideration; and

(5) Such other factors as are applicable pursuant to this part.

[40 FR 51621, Nov. 6, 1975]

§ 929.150 Transfer or assignment of base quantities.

(a) If indebtedness is incurred with regard to the acreage to which the cranberries are attributed on which the base quantity was established, the base holder may transfer or assign the base quantity solely as security for the loan, and during the existence of such indebtedness no further transfer or assignment of the base quantity by the base holder shall be recognized unless the lender agrees thereto: *Provided,* That a copy of such loan agreement shall be filed by any party thereto with the committee before any right expressed therein with regard to the base quantity shall be recognized under this paragraph.

(b) This regulation shall not in any way be construed to affect the right of the Secretary of Agriculture to amend, modify or terminate this regulation, or the marketing order under which it is issued as provided by law.

[34 FR 705, Jan. 17, 1969]

§ 929.151 Allotment transfers and disposition of the growers annual allotment certificate.

(a) Growers who transfer or receive the transfer of cranberries or allotment to fill deficiencies pursuant to § 929.49(c) shall report the details of such transfer to the committee on CMC forms T3 through T6, as applicable.

(b) Growers may enter into an agreement with a handler or handlers as to the disposition of the grower's annual allotment. The terms of the agreement shall be contained on CMC form T7 or a similarly executed agreement acceptable to the committee, and shall include the following:

(1) The quantity of allotment available to the handler for transfer;

(2) The effective date of the agreement; and

(3) The signature of the grower and the handler or their authorized representatives.

Any transfer effected by the handler pursuant to this agreement shall be documented on committee forms and submitted to the committee.

(c) Each grower shall submit to the committee his annual allotment certificate: *Provided,* That each grower may authorize a handler to submit the annual allotment certificate to the committee. Notification that the handler agrees to perform this service shall be provided to the committee and the terms of the agreement shall be contained on CMC form T7 or similarly executed agreement acceptable to the committee. Each handler shall submit the allotment certificate to the committee. Each allotment certificate submitted by the grower or his authorized handler shall show quantities of cranberries purchased by handlers and the dates on which such purchases were made. Each certificate shall be signed by the handler and indicate the date on which any transfers were made.

(d) Reports and annual allotment certificates required pursuant to this section shall be filed with the committee by January 15 of each year.

[43 FR 1474, Jan. 10, 1978]

§ 929.152 Delinquent assessments.

Each handler shall pay interest of one percent per month on any unpaid assessment balance beginning 30 days from the due date prescribed by the committee. Such interest charge is to apply to any unpaid assessments which become due the committee after the effective date of this section.

[43 FR 29764, July 11, 1978]

§ 929.153 Base quantity reserve.

(a) *Establishment.* An annual reserve base quantity equal to 2 percent of total base quantities is hereby established: *Provided,* that, for the 1984–85 crop year, the reserve base quantity shall be 2.38 percent, and for the 1985–86 crop year, the reserve base quantity shall be 11.55 percent.

(b) *Application.* Each grower who wishes to be considered for base quantity from the reserve shall file an application with the committee on a form provided by the committee not later than February 1 of the crop year. Such application shall identify the grower as either an existing grower (an "existing grower" shall mean any person who is engaged in producing cranberries on established cranberry acreage or now holds a base quantity certificate) or a new grower (a "new grower" shall mean any person who does not hold a base quantity certificate nor any interest in a base quantity certificate, financial or otherwise and shall include any grower who in the judgment of the committee has made firm and substantial commitments for the production of cranberries or any grower whose acreage did not previously qualify as established cranberry acreage). The application shall include the following information:

(1) Location of acreage,

(2) Acreage planted,

(3) Production and sales of cranberries for the preceding six-year period,

(4) Prospective production and such other information as may be required by the committee, including such information as may be deemed necessary for the committee to determine whether applicants who apply on the basis of firm and substantial commitments to produce cranberries are qualified.

(c) *Disposition.* Following the closing date for filing applications, a meeting or meetings of the committee shall be held for the purpose of reviewing applications, if any, and making a determination on each request. Such meeting or meetings shall be scheduled to begin no later than March 1 of the crop year.

(1) *Existing grower.* There shall be set aside for allocation to existing growers 75 percent of the amount determined under paragraph (a) of this section. The committee shall compute a base quantity share for each eligible applicant as follows:

(i) *Applicants with at least four years sales.* A share of reserve base quantity for each applicant who has at least four years sales shall be computed by the committee by subtracting the applicant's present base quantity from such applicant's average annual sales (from all of such applicant's acreage) for the four years, within the immediately preceding six-year period, in which such applicant's greatest sales were made.

(ii) *Applicants with less than four years sales.* A share of reserve base quantity for each applicant who has less than four years of sales shall be computed by the committee by subtracting the applicant's present base quantity, if any, from the applicant's average annual sales (from all such applicant's acreage) for the years in which such sales were made.

(iii) If the total amount computed for all existing grower applicants exceeds the amount of reserve base quantity available, then each applicant's share shall be adjusted by multiplying each such share by a factor obtained by dividing the amount of reserve base quantity available by the total amount computed for all existing grower applicants.

(2) *New grower.* There shall be set aside for allocation to new growers 25 percent of the amount determined under paragraph (a) of this section. Base quantity share shall be determined by multiplying the grower's cranberry acreage by the State average base quantity per acre. If the total amount computed for all new grower applicants exceeds the amount of reserve base quantity available, then each applicant's share shall be adjusted by multiplying each such share by a factor obtained by dividing the amount of reserve base quantity available by the total amount computed for all new grower applicants. Base quantity shall be issued to each approved applicant from such applicant's base quantity share in an amount equal to

the estimated production for that crop year. No base quantity share based on estimated production or allotment based on such share shall be transferred to another grower. Successive increment allocations based upon an annual application by the new grower shall be made until the balance of the base quantity share for that grower is exhausted. Thereafter, the new grower may apply to the committee for additional base quantity from the proportion of the reserve allocated to existing growers. Any producer who does not reach the State average base quantity per acre within six years from the time the application is approved by the committee shall lose the "new grower" status and receive a base quantity equal to the average of the producer's two best crops during this six-year period. All or any part of the base quantity reserved for new growers not needed to fill new grower requests, may be allocated by the committee to eligible existing growers.

(d) *Invalidation of base quantity.* The base quantity of a grower who has made no bona fide effort to produce and sell cranberries for five consecutive seasons, commencing with the 1978–79 season, may be declared invalid and cancelled at the end of the fifth season. The committee shall determine if a grower is making a bona fide effort to produce and sell cranberries based upon the producer's level of production each crop year during the five-year period and taking due account of any special factors which may have affected or may be affecting such production, including, but not necessarily limited to, frosts, disease, water shortages, bog renovation, and illness of a kind causing inability to carry out the management of his crop. The committee shall notify the grower and initiate investigations as appropriate and necessary to obtain full and complete information bearing on the subject prior to taking any action to cancel a base quantity.

(e) Each producer shall file with the committee a report by February 1 of each crop year indicating new acreage planted and sales of cranberries from such acreage.

(f) Any producer who is dissatisfied with the action of the committee pursuant to § 929.153 may appeal to the Secretary in accordance with § 929.125.

[44 FR 12018, Mar. 5, 1979, as amended at 44 FR 60977, Oct. 5, 1979; 49 FR 36627, Sept. 19, 1984; 50 FR 23108, May 13, 1985]

§ 929.160 Public member eligibility requirements and nomination procedures.

(a) Public member and alternate member candidates shall not represent an agricultural interest and shall not have a financial interest in, or be associated with the production, processing, financing, or marketing of cranberries.

(b) Public member and alternate member candidates should be able to devote sufficient time to attend committee activities regularly and to familiarize themselves with the background and economies of the cranberry industry.

(c) Names of candidates together with evidence of qualification for public membership on the Cranberrry Marketing Committee shall be submitted to the committee at its business office, 147 Everett Street, or P.O. Box 800, Middleboro, MA 02346.

(d) Questionnaires shall be sent by the committee to those persons submitted as candidates to determine their eligibility and interest in becoming a public member.

(e) The names of persons nominated by the committee for the public member and alternate positions shall be submitted to the Secretary with such information as deemed pertinent by the committee or as requested by the Secretary.

(f) Public members shall serve a two-year term which coincides with the term of office of industry members of the committee.

[44 FR 16884, Mar. 20, 1979]

NOTE: After January 1, 1979, "Budget of Expenses and Rate of Assessment" regulations (e.g. sections .200 through .299) and "Handling" regulations (e.g. sections .300 through .399) which are in effect for a year or less, will not be carried in the Code of Federal Regulations. For FEDERAL REGISTER citations affecting these regulations, see the "List of CFR Sections Affected" in this volume.

PART 930—CHERRIES GROWN IN MICHIGAN, NEW YORK, WISCONSIN, PENNSYLVANIA, OHIO, VIRGINIA, WEST VIRGINIA AND MARYLAND

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930.591 Conditions governing the sale of reserve pool cherries.

AUTHORITY: Secs. 1-19, 48 Stat. 31, as amended; 7 U.S.C. 601-674.

SOURCE: 36 FR 1088, Jan. 23, 1971, unless otherwise noted.

Subpart—Order Regulating Handling

DEFINITIONS

§ 930.1 Secretary.

"Secretary" means the Secretary of Agriculture of the United States, or any officer or employee of the U.S. Department of Agriculture to whom authority has heretofore been delegated, or to whom authority may hereafter be delegated, to act in his stead.

§ 930.2 Act.

"Act" means Public Act No. 10, 73d Congress (May 12, 1933), as amended, and as reenacted and amended by the Agriculture Marketing Agreement Act

of 1937, as amended (48 Stat. 31, as amended; 7 U.S.C. 601-674).

§ 930.3 Person.

"Person" means an individual, partnership, corporation, association, or any other business unit.

§ 930.4 Production area.

"Production area" means the States of Michigan, New York, Wisconsin, Pennsylvania, Ohio, West Virginia, Virginia, and Maryland.

§ 930.5 Cherries.

"Cherries" means all cherries grown in the production area of the Meteor variety, and all cherries of any or all varieties of cherries, grown in the production area, classified botanically as Prunus cerasus.

§ 930.6 Fiscal period.

"Fiscal period" is synonymous with fiscal year and means the 12-month period beginning on May 1 of one year and ending on the last day of April of the following year: *Provided*, That the initial fiscal period shall begin on the effective date of this part.

§ 930.7 Board.

"Board" means the Cherry Administrative Board established pursuant to § 930.20.

§ 930.8 Grower.

"Grower" is synonymous with "producer" and means any person who produces cherries to be marketed in canned, frozen, or other processed form and who has a proprietary interest therein.

§ 930.9 Handler.

"Handler" means any person who first handles cherries or causes cherries to be handled.

§ 930.10 Handle.

"Handle" means to pit, can, freeze, dehydrate, press, or brine cherries, or in any other way convert cherries commercially into a processed product: *Provided*, That the term "handle" shall not include the pitting, canning, freezing, dehydration, pressing, or brining or the converting, in any other way, (a) of cherries into a processed product for home use and not for resale; or (b) of cherries, which are diverted pursuant to § 930.56, into a processed product.

§ 930.11 District.

"District" means the applicable one of the following described subdivisions of the production area, or such other subdivisions as may be prescribed pursuant to § 930.30(e):

District 1—The State of New York and Erie County, Pa.
District 2—The States of Maryland, Pennsylvania except Erie County, Virginia, and West Virginia.
District 3—That portion of the State of Michigan which is north of a line drawn along the boundary of Mason and Manistee Counties and extended east to Lake Huron and the State of Wisconsin.
District 4—That portion of the State of Michigan which is south of District 3 and north of a line drawn along the boundary of Allegan and Ottawa Counties and extended east to the St. Clair River.
District 5—The State of Michigan not included in Districts 3 and 4, and the state of Ohio.

ADMINISTRATIVE BODY

§ 930.20 Establishment and membership.

(a) There is hereby established a Cherry Administrative Board consisting of 12 members, each of whom shall have an alternate having the same qualifications as the member for whom he is an alternate. Six of the members and their alternates shall be growers or officers or employees of growers. Six of the members and their alternates shall be handlers or officers or employees of handlers. There shall be an individual who shall serve as nonvoting chairman of the Board, and an individual who shall serve as his alternate.

(b) District representation on the committee shall be as follows:

District	Grower members	Handler members
1	1	1
2	1	1
3	2	2
4	1	1
5	1	1

§ 930.21 Term of office.

The term of office of each member and alternate member of the Board shall be for 3 fiscal years: *Provided,* That one-third of the initial members and alternates shall serve only until April 30, 1971, and one-third of such members and alternates shall serve only until April 30, 1972 (Determination of which of the initial members and their alternates shall serve for 1 fiscal year, 2 fiscal years, and 3 fiscal years shall be by lot). Members and alternate members shall serve in such capacity for the portion of the term of office for which they are selected and have qualified and until their respective successors are selected and have qualified. The consecutive terms of office of members shall be limited to two 3-year terms. The nonvoting chairman of the Board and his alternate shall serve at the pleasure of the Secretary. The Secretary shall give consideration to any recommendation of the Board with respect to termination of the appointment of the chairman or his alternate.

§ 930.22 Nomination.

(a) Initial members: The Secretary shall hold, or cause to be held, meetings of growers and of handlers to nominate the initial members and alternate members of the Board. Such meetings shall be held as soon as practicable after the effective date of his part, and shall be conducted in the manner provided in paragraph (b) of this section.

(b) Successor members:

(1) Nominations for successor members of the Board, and their respective alternates, shall be made at separate meetings of growers and handlers. Such meetings shall be held at such times (on or before April 1 of each year) and places as the Board shall designate. One nominee shall be elected at nomination meetings for each member and one nominee for each alternate member position to be filled. The names and addresses of each nominee shall be submitted to the Secretary not later than April 15 of each year. The Board shall prescribe such procedure for the conduct of the nomination meetings as shall be fair to all persons concerned.

(2) Only growers, including duly authorized officers or employees of growers, who are present and who are eligible to serve as grower members of the Board, shall participate in the nomination of grower members and alternate grower members of the Board. No grower shall participate in the selection of nominees in more than one district during any fiscal period. If a producer produces cherries in more than one district, he shall select the district in which he will so participate and notify the Board of his choice.

(3) Only handlers, including duly authorized officers or employees of handlers, who are present and who are eligible to serve as handler members of the Board, shall participate in the nomination of handler members and alternate handler members of the Board. No handler shall participate in the selection of nominees in more than one district during any fiscal period. If a person is both a grower and a handler of cherries, such person may vote either as a grower or handler, but not as both. However, if a person is a grower and a grower-handler, because he had some cherries custom packed but who does not own or lease and operate a processing facility, such person may vote only as a grower.

(c) The members of the Board appointed by the Secretary pursuant to § 930.23 shall, at the first meeting, and whenever necessary thereafter, by a majority vote of those present, nominate an individual to serve as nonvoting chairman of the Board, and an individual to serve as his alternate.

§ 930.23 Appointment.

From the nominations made pursuant to § 930.22, or from other qualified individuals, the Secretary shall appoint the chairman of the Board and his alternate and the members of the Board and an alternate for each such member on the basis of the representation provided for in § 930.20.

§ 930.24 Failure to nominate.

If nominations are not made within the time and in the manner prescribed in § 930.22, the Secretary may, without regard to nominations, select the

chairman and his alternate and select the members and alternate members of the Board on the basis of representation provided for in § 930.20.

§ 930.25 Acceptance.

Any person selected by the Secretary as the chairman or his alternate or as a member or as an alternate member of the Board shall qualify by filing a written acceptance with the Secretary within 10 days after being notified of such appointment.

§ 930.26 Vacancies.

To fill any vacancy occasioned by the failure of any person appointed as a member or as an alternate member of the Board to qualify, or in the event of the death, removal, resignation, or disqualification of any member or alternate member of the Board, a successor for the unexpired term of such member or alternate member of the Board shall be nominated and appointed in the manner specified in §§ 930.22 and 930.23. If the names of the nominees to fill any such vacancy are not made available to the Secretary within 30 days after such vacancy occurs, the secretary may fill such vacancy without regard to nominations, which appointment shall be made on the basis of representation provided for in § 930.20.

§ 930.27 Alternate members.

An alternate member of the Board, during the absence of the member for whom he is an alternate, shall act in the place and stead of such member and perform such other duties as assigned. In the event of the death, removal, resignation, or disqualification of a member, his alternate shall act for him until a successor for such member is appointed and has qualified. In the event that a grower member and his alternate are unable to attend a Board meeting, the grower members present at such meeting may designate any other grower alternate to serve in such absent grower member's place and stead at that meeting. In the event that a handler member and his alternate are unable to attend a Board meeting, the handler members present at such meeting may designate any other handler alternate to serve in such absent handler member's place and stead at that meeting.

§ 930.28 Eligibility for membership on Cherry Administrative Board.

(a) Each grower member and each grower alternate member of the Board shall be a grower, or an officer or employee of a grower in the district for which nominated or appointed.

(b) Each handler member and each handler alternate member of the Board shall be a handler, or an officer or employee of a handler, who owns, or leases, and operates a cherry processing facility in the district for which nominated or appointed.

§ 930.29 Powers.

The Board shall have the following powers:

(a) To administer the provisions of this part in accordance with its terms;

(b) To receive, investigate, and report to the Secretary complaints of violations of the provisions of this part;

(c) To make and adopt rules and regulations to effectuate the terms and provisions of this part; and

(d) To recommend to the Secretary amendments to this part.

§ 930.30 Duties.

The Board shall have, among others, the following duties:

(a) To select such officers, other than the chairman, as may be necessary, and to define the duties of such officers, and the duties of the chairman and his alternate;

(b) To appoint such employees, agents, and representatives as it may deem necessary and to determine compensation and to define the duties of each;

(c) To submit to the Secretary as soon as practicable after the beginning of each fiscal period a budget for such fiscal period, including a report in explanation of the items appearing therein and a recommendation as to the rate of assessment for such period;

(d) To keep minutes, books, and records which will reflect all of the acts and transactions of the Board and which shall be subject to examination by the Secretary;

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(e) To prepare periodic statements of the financial operations of the Board and to make copies of each statement available to growers and handlers for examination at the office of the Board;

(f) To cause its books to be audited by a competent public accountant at least once each fiscal year and at such times as the Secretary may request;

(g) To act as intermediary between the Secretary and any grower or handler;

(h) To investigate and assemble data on the growing, handling, and marketing conditions with respect to cherries;

(i) To submit to the Secretary the same notice of meeting of the Board as is given to its members;

(j) To submit to the Secretary such available information as he may request;

(k) To investigate compliance with the provisions of this part; and

(l) With the approval of the Secretary, to re-define the districts into which the production area is divided, and to reapportion the representation of any district on the Board: *Provided*, That any such changes shall reflect, insofar as practicable, shifts in cherry production within the districts and the production area.

§ 930.31 Procedure.

(a) Eight members of the Board, including alternates acting for members, shall constitute a quorum and any action of the Board shall require a majority vote of those present.

(b) The Board may provide for simultaneous meetings of groups of its members at two or more designated places or may use a telephone conference call meeting: *Provided*, That such meetings shall be subject to the establishment of communications so that each member may participate in the discussions and other actions the same as if the Board were assembled in one place.

(c) The Board may vote by telephone, telegraph, or other means of communication, and any votes so cast shall be confirmed promptly in writing: *Provided*, That if an assembled meeting is held, all votes shall be cast in person.

§ 930.32 Expenses and compensation.

The members of the Board, and alternates when acting as members, and the chairman of the Board, and his alternate when acting as chairman, or when either or any of them are performing other prescribed duties, shall serve without compensation but shall be reimbursed for necessary expenses, as approved by the Board, incurred by them in the performance of their duties under this part. The Board at its discretion may request the attendance of one or more alternates, including the alternate to the nonvoting chairman, at any or all meetings, notwithstanding the expected or actual presence of the chairman or the respective member, and may pay expenses, as aforesaid.

Expenses and Assessments

§ 930.40 Expenses.

The Board is authorized to incur such expenses as the Secretary finds are reasonable and likely to be incurred by the Board for its maintenance and functioning and to enable it to exercise its powers and perform its duties in accordance with the provisions of this part. The funds to cover such expenses shall be paid to the Board by handlers in the manner prescribed in § 930.41.

§ 930.41 Assessments.

(a) As his pro rata share of the expenses which the Secretary finds are reasonable and likely to be incurred by the Board during a fiscal period, each handler shall pay to the Board, upon demand, assessments on all cherries handled by him during such period as the handler thereof. The payment of assessments for the maintenance and functioning of the Board may be required under this part throughout the period it is in effect, irrespective of whether particular provisions thereof are suspended or become inoperative.

(b) The Secretary shall fix the rate of assessment to be paid by each handler during the fiscal period in an amount designed to secure sufficient funds to cover the expenses which may be incurred during such period. At any time during or after the fiscal

period, the Secretary may increase the rate of assessment in order to secure sufficient funds to cover any later finding by the Secretary relative to the expenses which may be incurred. Such increase shall be applied to all cherries handled during the applicable fiscal period. In order to provide funds for the administration of the provisions of this part during the first part of a fiscal period before sufficient operating income is available from assessments, the Board may accept the payment of assessments in advance, and may also borrow money for such purposes. If a handler does not pay his assessment within the time prescribed by the Board, the unpaid assessment may be subject to an interest charge at a rate prescribed by the Board, with the approval of the Secretary.

§ 930.42 Accounting.

(a) If, at the end of a fiscal period, the assessments collected are in excess of expenses incurred, the Board, with the approval of the Secretary, may carry over all or any portion of such excess into subsequent fiscal periods as reserve: *Provided,* That funds already in the reserve do not exceed approximately one fiscal period's expenses. Such reserve funds may be used (1) to cover any expenses authorized by this part and (2) to cover necessary expenses of liquidation in the event of termination of this part. If any such excess is not retained in a reserve, it shall be refunded proportionately to the handlers from whom the excess was collected. Upon termination of this part, any funds not required to defray the necessary expenses of liquidation shall be disposed of in such a manner as the Secretary may determine to be appropriate: *Provided,* That to the extent practicable, such funds shall be returned pro rata to the persons from whom such funds were collected.

(b) All funds received by the Board pursuant to the provisions of this part shall be used solely for the purpose specified in this part and shall be accounted for in the manner provided in this part. The Secretary may at any time require the Board and its members to account for all receipts and disbursements.

Regulations

§ 930.50 Marketing policy.

Each season prior to making any recommendations pursuant to § 930.51, the Board shall submit to the Secretary a report setting forth its marketing policy for the ensuing marketing season. Such marketing policy report shall contain information relating to:

(a) The estimated total production of cherries;

(b) The expected general quality of such cherry production;

(c) The expected carryover as of July 1 of canned and frozen cherries and other cherry products;

(d) The expected demand conditions for cherries in different market outlets;

(e) Supplies of competing commodities;

(f) Trend and level of consumer income;

(g) Other factors having a bearing on the marketing of cherries; and

(h) The regulation expected to be recommended during the marketing season.

§ 930.51 Recommendations for volume regulation.

(a) Not later than June 25 of each year the Board, if it deems it advisable to regulate the handling of cherries in the manner provided in § 930.52, shall so recommend to the Secretary.

(b) In arriving at its recommendations for regulations pursuant to paragraph (a) of this section, the Board shall give consideration to current information with respect to the factors affecting the supply of and demand for cherries during the then current fiscal period. With each such recommendation for regulation, the Board shall submit to the Secretary the data and information on which such recommendation is predicated and such other available information as the Secretary may request.

(c) All assembled meetings of the Board shall be open to growers and handlers and other interested persons. The Board shall publish notice of such meetings in such newspapers as it deems appropriate and shall mail notice of such meetings to each grower

and handler and any other interested person who has filed his name and address with the Board for such purpose.

§ 930.52 Issuance of volume regulations.

(a) The Secretary shall limit, in the manner specified in this section, the quantity of cherries which handlers may acquire and freely handle during the then current fiscal period, whenever he finds from the recommendations and information submitted by the Board, or from other available information, that such regulation will tend to effectuate the declared policy of the act. Such regulation shall fix the free and restricted percentages, totaling 100 percent, which shall be applied in accordance with § 930.54 to cherries acquired by handlers during such fiscal period.

(b) The Board shall be informed immediately of any such regulation issued by the Secretary, and the Board shall promptly give notice thereof to handlers.

§ 930.53 Revision of percentages; release of reserve pool cherries.

(a) *Revision of percentages.* As soon as practicable after completion of the processing of the current crop of cherries, the Board shall determine the total quantity of free percentage cherries handled from the current crop. If the determination reveals that the total quantity of free percentage cherries handled is less than the quantity determined earlier by the Board as the quantity of cherries which should be available for handling, it shall recommend to the Secretary revision of the free and restricted percentages for the current fiscal year to become effective during the period September 15-25 of the fiscal year, or during such other 10-day period as may be recommended by the Board and approved by the Secretary. The additional amount of cherries so recommended referable to the revised free percentage shall be the amount required to make the total available supplies for use in normal commercial outlets equal, but not exceed, the amount, as estimated by the Board, needed to meet the demand in such outlets.

(b) *Release of reserve pool cherries.* (1) If the Board determines that the total available supplies for use in normal commercial outlets do not at least equal the amount, as estimated by the Board, needed to meet the demand pursuant to paragraph (a) of this section, in such outlets, the Board shall recommend to the Secretary that during the period September 15-25 of the fiscal period or such other 10-day period as may be recommended by the Board and approved by the Secretary, that a portion or all of the reserve pool cherries of prior fiscal years be released to handlers for such use.

(2) On and after March 15 of each year and prior to June 1 of such year, the Board may recommend to the Secretary that a portion or all of the oldest reserve pool or pools be released for use in normal commercial channels to the extent that the total available supply in normal commercial outlets is less than needed to meet the demand in such outlets. Such reserve pool cherries shall be offered for sale to handlers for a period of 10 days: *Provided,* That only one period shall be authorized by the Secretary from March 15 to June 1 of each year.

(3) Whenever the Secretary finds, from the recommendation and information submitted by the Board pursuant to this paragraph, or from other available information, that a portion or all of the cherries in the reserve pools should be released, he shall authorize the Board to release such cherries as provided in § 930.59.

§ 930.54 Reserve pool.

(a) Whenever the Secretary has fixed the free and restricted percentages for any fiscal period, as provided for in § 930.52(a), each handler shall set aside for the reserve pool for such period, at such time and in such manner and form, other than as canned cherries or canned cherry products, as the Board may prescribe, a portion of the cherries he acquires during such period. Except as otherwise permitted pursuant to §§ 930.56 and 930.61, such reserve pool portion shall be equal to the sum of the products obtained by multiplying the weight or volume of the cherries in each lot of cherries acquired during the fiscal period by the then effective

restricted percentage fixed by the Secretary: *Provided*, That in converting cherries in each lot to the form prescribed by the Board the reserve pool obligations shall be adjusted, in accordance with uniform rules adopted by the Board, to recognize shrinkage and loss resulting from processing.

(b) Reserve pool cherries shall meet such standards of grade, quality, or condition as the Board, with the approval of the Secretary, may prescribe. All such cherries shall be inspected by the Processed Standardization and Inspection Branch, U.S.D.A. A certificate of such inspection shall be issued which shall show, among other things, the name and address of the handler, the number and type of containers in the lot, the grade of the product, the location where the lot is stored, identification marks (can codes or lot stamp), and a certification that the cherries meet the prescribed standards. Promptly after inspection and certification, each such handler shall submit, or cause to be submitted, to the Board, at the place designated by the Board, a copy of the certificate of inspection issued with respect to such cherries.

(c) Each handler shall hold his reserve pool for the account of the Board until relieved of such responsibility by the Board. Such reserve pool cherries shall be stored in accordance with good commercial practice and shall be separate and apart from any other cherries in possession of the handler. Each handler so holding reserve pool shall deliver to the Board, upon demand, such portion of the reserve pool held by him as the Board may specify.

(d) All matters dealing with reserve pools, including, but not being limited to, the costs to be borne and shared by equity holders and for which handlers are to be compensated and the distribution of proceeds from the disposition of reserve pools shall be in accordance with rules and procedures established by the Board, with the approval of the Secretary, and shall be equitable to equity holders and handlers.

§ 930.55 Off-premise reserve pool.

No handler may transfer a reserve pool obligation but any handler may, upon notification to the Board, arrange to hold reserve pool, of his own production or which he has purchased, on the premises of another handler or in an approved commercial storage in the same manner as though the reserve pool were on his own premises.

§ 930.56 Diversion privilege.

As used in this section and in §§ 930.58 and 930.60, "producer" includes any person who purchased cherries from the grower and is reselling them to a handler. Any producer may voluntarily elect to divert, in accordance with provisions of this section, all or a portion of his cherries which otherwise, upon delivery to a handler, would become restricted percentage cherries. Upon such diversion and compliance with the provisions of this section, the Board shall issue to the diverting producer a diversion certificate which shall entitle such producer to deliver to a handler, and such handler to receive, the specified weight of cherries free from all reserve pool requirements.

(a) *Eligible diversion.* Diversion certificates shall be issued to producers only if the cherries are diverted in accordance with the following terms and conditions to such of the following outlets as the Board with the approval of the Secretary may designate: Uses exempt under § 930.61; nonhuman food uses; or other uses, including diversion by leaving such cherries unharvested.

(1) Application: The producer electing to so divert cherries shall first make application to the Board for permission to do so. Such application shall describe in detail the manner in which the applicant proposes to divert cherries including, if the diversion is to be by means of leaving the cherries unharvested, a detailed description of the location of the orchard and the ages of the trees therein. It shall also contain an agreement that the proposed diversion is to be carried out under the supervision of the Board and that the cost of such supervision is to be paid by the applicant.

(2) *Diversion certificate.* If the Board approves the application it shall so notify the applicant and conduct

such supervision of the applicant's diversion of cherries as may be necessary to assure that the cherries are diverted. After the diversion has been accomplished, the Board shall issue to the diverting producer a diversion certificate stating the weight of cherries which may be delivered to a handler free from all reserve pool requirements; the latter of which shall be in an amount having the same relationship to the weight of cherries diverted as that existing between the free and restricted percentages fixed pursuant to § 930.52 or § 930.53, as applicable. Where diversion is carried out by leaving the cherries unharvested, the Board shall estimate the weight of cherries diverted on the basis of such uniform rule as the Board, with the approval of the Secretary, may prescribe.

(b) Any producer who diverts cherries pursuant to the provisions of this section shall be entitled to participate in proceeds from the disposition of reserve pool cherries only if he delivers cherries to handlers in excess of the quantity shown on his diversion certificate and then only to the extent of such excess delivery of cherries. The Board, with the approval of the Secretary, shall adopt procedural rules and regulations to effectuate the provisions of this section.

§ 930.57 Equity holders.

A grower's equity in the reserve pool may be transferred to another person upon notification to the Board. So that the Board may determine each producer's, or his successor's in interest, equity in the total reserve pool, each handler who receives cherries shall determine and certify to the Board the weight of cherries received, the name and address of the producer or successor in interest. Each weight and determination shall be made in accordance with uniform rules adopted by the Board and approved by the Secretary.

§ 930.58 Handler compensation.

Each handler shall be compensated for receiving, processing, storing and such other costs relating to the reserve pool as the Board may deem to be appropriate. The Board shall, as near the beginning of the fiscal year as may be practicable, with the approval of the Secretary, establish a schedule of charges for receiving, processing, storing and other costs related to the reserve pool. The payment of such costs shall be by the producers having an interest in the reserve pool, or their successors in interest, and may be deducted from any monies owed by handlers to such persons. A handler may request the Board to remove pool cherries from his premises upon expiration of prepaid storage charges or refund of unearned charges, and the Board shall comply within a reasonable time consistent with the availability of suitable storage. Upon any such removal the handler shall also pay one-half of the cost of such removal and shall forfeit to the extent of the removed volume, his pro rata share in any offer to sell reserve pool and such share shall be allocated to the successor storing handler.

§ 930.59 Disposition of reserve pool.

(a) The Board shall offer reserve pool cherries for purchase by handlers for disposition in accordance with § 930.53(b). Reserve pool cherries shall be sold to handlers at prices and in a manner intended to maximize returns to equity holders and achieve complete disposition of such cherries.

(b) The Board shall offer each handler his share of each reserve pool to be sold by the Board. Each such share shall be determined by applying to the total quantity of cherries in such reserve pool, the percentage that the cherries in such reserve pool that were handled by such handler is of the total quantity of cherries in the reserve pool handled by all handlers. If any handler declines, or fails to purchase all or any part of his share, the share or remainder shall be offered in accordance with the terms and conditions of the offer to all handlers who have purchased their respective shares.

(c) The Board shall have the power and authority to dispose of, at any time throughout the year as it may deem appropriate, any or all reserve pool cherries for any experimental

purposes and for any nonhuman use, including animal feed, or any use other than normal commercial outlets.

§ 930.60 Disposition of proceeds from sale of reserve pool.

The proceeds from the disposition of any reserve pool shall be distributed, after deduction of any expenses incurred by the Board in receiving, handling, holding, and disposing thereof, to the respective producers or their successors in interest, on the basis of the tonnage of their respective contributions to the reserve pool. The distribution of proceeds to producer members of cooperative associations, which are handlers and have reserve pool cherries pursuant to § 930.54, shall be made to the appropriate association.

§ 930.61 Exemptions.

The Board, with the approval of the Secretary, may exempt from the provisions of §§ 930.52 through 930.60 cherries used for experimental purposes or processed into products which used less than 5 percent of the preceding 5-year average production of cherries. The Board with the approval of the Secretary, shall prescribe such rules, regulations, and safeguards as it may deem necessary to insure that cherries handled under the provisions of this section are handled only as authorized.

Reports and Records

§ 930.62 Reports.

(a) *Inventory.* Each handler shall, upon request of the Board, file promptly with the Board a certified report showing such information as the Board shall specify with respect to any cherries or cherry products which were held on such date as the Board may designate.

(b) *Receipts.* Each handler shall, upon request of the Board, file promptly with the Board a certified report showing the name and address of each grower and the total weight of cherries delivered for the season.

(c) *Other reports.* Upon the request of the Board, with the approval of the Secretary, each handler shall furnish to the Board such other information with respect to the cherries acquired, handled and disposed of by such handler as may be necessary to enable the Board to exercise its powers and perform its duties under this part.

§ 930.63 Records.

Each handler shall maintain such records of all cherries acquired, handled, or sold, or otherwise disposed of as will substantiate the required reports and as may be prescribed by the Board. All such records shall be maintained for not less than two years after the termination of the fiscal year in which the transactions occurred or for such lesser period as the Board may direct.

§ 930.64 Verification of reports and records.

For the purpose of assuring compliance and checking and verifying the reports filed by handlers, the Secretary and the Board, through its duly authorized agents, shall have access to any premises where applicable records are maintained, where cherries are received, stored, or handled, and, at any time during reasonable business hours, shall be permitted to inspect such handlers premises and any and all records of such handlers with respect to matters within the purview of this part.

§ 930.65 Confidential information.

All reports and records furnished or submitted by handlers to the Board and its authorized agents which include data or information constituting a trade secret or disclosing trade position, financial condition, or business operations of the particular handler from whom received, shall be received by and at all times kept in the custody and under the control of one or more employees of the Board, who shall disclose such information to no person other than the Secretary.

Miscellaneous Provisions

§ 930.70 Compliance.

Except as provided in this part, no person may handle cherries, the handling of which has been prohibited by the Secretary under this part, and no person shall handle cherries except in

conformity with the provisions of this part and the regulations issued hereunder. No person may handle any cherries for which a diversion certificate has been issued other than as provided in § 930.56(a).

§ 930.71 Right of the Secretary.

The chairman of the Board and his alternate, and members of the Board (including successors and alternates), and any agents, employees, or representatives thereof, shall be subject to removal or suspension by the Secretary at any time. Each and every regulation, decision, determination, or other act of the chairman and his alternate and of the Board shall be subject to the continuing right of the Secretary to disapprove of the same at any time. Upon such disapproval, the disapproved action of the chairman and his alternate and of the Board shall be deemed null and void, except as to acts done in reliance thereon or in accordance therewith prior to such disapproval by the Secretary.

§ 930.72 Effective time.

The provisions of this part, and of any amendment thereto, shall become effective at such time as the Secretary may declare above his signature and shall continue in force until terminated in one of the ways specified in § 930.73.

§ 930.73 Termination.

(a) The Secretary at any time may terminate the provisions of this part by giving at least 1 day's notice by means of a press notice or in any other manner in which he may determine.

(b) The Secretary shall terminate or suspend the operation of any and all of the provisions of this part whenever he finds that such provisions do not tend to effectuate the declared policy of the act.

(c) The Secretary shall terminate the provisions of this part whenever he finds by referendum or otherwise that such termination is favored by a majority of the growers: *Provided*, That such majority has, during the current fiscal year, produced more than 50 percent of the volume of the cherries which were produced within the production area. Such termination shall become effective on the last day of April subsequent to the announcement thereof by the Secretary.

(d) The Secretary shall conduct a referendum within the month of March of every fifth year after the effective date of this part to ascertain whether continuation of this part is favored by the growers and handlers. If it develops from said referenda that (1) more than 50 percent of the producers by number or volume of production represented in the referendum or (2) more than 50 percent of the handlers, who during the current fiscal period handled more than 50 percent of the total volume of cherries processed within the production area by those handlers voting in the referendum favor termination of this part, the Secretary shall give consideration to terminating the provisions of this part in accordance with paragraph (c) of this section.

(e) The provisions of this part shall, in any event, terminate whenever the provisions of the Act authorizing them cease to be in effect.

§ 930.74 Proceedings after termination.

(a) Upon the termination of the provisions of this part, the then functioning members of the Board shall, for the purpose of liquidating the affairs of the Board, continue as trustees of all the funds and property then in its possession, or under its control, including claims for any funds unpaid or property not delivered at the time of such termination.

(b) The said trustees shall (1) continue in such capacity until discharged by the Secretary; (2) from time to time account for all receipts and disbursements and deliver all property on hand, together with all books and records of the Board and of the trustees, to such person as the Secretary may direct; and (3) upon the request of the Secretary, execute such assignments or other instruments necessary or appropriate to vest in such person full title and right to all of the funds, property, and claims vested in the Board or in the trustees pursuant to this part.

(c) Any person to whom funds, property, and claims have been transferred

or delivered, pursuant to this section, shall be subject to the same obligations imposed upon the Board and upon the trustees.

§ 930.75 Effect of termination or amendment.

Unless otherwise expressly provided by the Secretary, the termination of this part or of any regulation issued pursuant to this part, or the issuance of any amendment to either thereof, shall not: (a) Affect or waive any right, duty, obligation, or liability which shall have risen or which may thereafter arise in connection with any provision of this part or any regulation issued thereunder, or (b) release or extinguish any violation of this part or any regulation issued thereunder, or (c) affect or impair any rights or remedies of the Secretary or any other person with respect to any such violation.

§ 930.76 Duration of immunities.

The benefits, privileges, and immunities conferred upon any person by virtue of this part shall cease upon its termination, except with respect to acts done under and during the existence of this part.

§ 930.77 Agents.

The Secretary may, by designation in writing, name any officer or employee of the United States, or name any agency or division in the U.S. Department of Agriculture to act as his agent or representative in connection with any provisions of this part.

§ 930.78 Derogation.

Nothing contained in this part is, or shall be construed to be, in derogation or in modification of the rights of the Secretary or of the United States (a) to exercise any powers granted by the act or otherwise, or (b) in accordance with such powers, to act in the premises whenever such action is deemed advisable.

§ 930.79 Personal liability.

No member or alternate member of the Board and no employee or agent of the Board nor the chairman of the Board and his alternate shall be held personally responsible, either individually or jointly with others, in any way whatsoever, to any person for errors in judgment, mistakes, or other acts, either of commission or omission, as such member, chairman alternate, employee, or agent, except for act of dishonesty, willful misconduct, or gross negligence.

§ 930.80 Separability.

If any provision of this part is declared invalid or the applicability thereof to any person, circumstance, or thing is held invalid, the validity of the remainder of this part or the applicability thereof to any other person, circumstance, or thing shall not be affected thereby.

Subpart—Rules and Regulations

§ 930.101 Diversion application.

(a) In order for a producer's application for diversion to be eligible for consideration by the Cherry Administrative Board for the forthcoming fiscal year, the producer shall submit to or have on file with the Board the following information:

(1) Name and address of the applicant.

(2) District or districts in which applicant's orchard sites are located.

(3) Age of trees, number of rows of trees, number of trees in each row, number of rows in each block and a diagram of each block referencing the compass points.

(4)(i) Total of applicant's acreage devoted to cherry production with a subtotal for each definable block included in this total.

(ii) Such information submitted as above shall not be considered as application for diversion.

(b) Each producer who elects to divert cherries into an outlet, as the Board, with the approval of the Secretary may designate as specified in § 930.56, shall prior to such diversion submit to the Board at its office, or such other location as may be specified by the Board, on forms provided by the Board, an application to divert cherries as required by § 930.56(a)(1). Applications for diversion by export shall be filed with the Board not later than September 15 of the current

fiscal year. Applications for all other forms of diversion shall be filed with the Board not later than July 8 of the current fiscal year: *Provided,* That such applications for growers who will harvest cherries prior to July 8 of any fiscal year shall be filed on such earlier date as may be specified by the Board or, if not so specified, prior to harvest of such cherries.

(c) Each producer who elects to divert cherries by other than leaving such cherries unharvested, shall include with such producer's application for diversion, a copy of an agreement between such producer and the processor to whom such producer will deliver diverted cherries. Such agreement, signed by the producer and the processor (or such processor's designated representative) shall indicate the method of diversion to be utilized, the percentage of delivered cherries to be diverted, and the processor's agreement to supply the Board with documentation sufficient to prove that such percentage of the total deliveries were packed and utilized in the indicated manner.

[41 FR 21762, May 28, 1976, as amended at 49 FR 24511, June 14, 1984; 49 FR 31390, Aug. 7, 1984; 50 FR 24900, June 14, 1985 and 50 FR 32843, Aug. 15, 1985]

EDITORIAL NOTE: At 49 FR 31390, Aug. 7, 1984, § 930.101(b) was revised. This amendment contains recordkeeping requirements which will not be effective until OMB approval has been obtained.

§ 930.102 Diversion fees.

(a) Each producer who makes application to divert cherries pursuant to § 930.56 shall pay to the Board the direct cost of supervision of the diversion as specified in the order: *Provided,* That no costs shall be incurred for blocks of cherry trees aged 4 years or younger. Such direct costs are hereby established as follows:

(1) Schedule of fees to be assessed applicant:

Fee	Total acres to be diverted
$50.00	50 acres or less.
$75.00	51–100 acres.
$100.00	101–150 acres.
$150.00	151–200 acres.
$200.00	201 acres or more.

(i) In addition to the above fee, there would be assessed $10.00 per site not contiguous to any other site specified in the application: *Provided,* That said sites shall be considered as contiguous if said sites and the connecting properties are owned or controlled by the applicant.

(ii) Each application shall be accompanied by the full fee applicable to such diversion request. Such payment shall be in the form of cash, or check made payable to the Cherry Administrative Board: *Provided,* That said fee, minus costs incurred by the board in connection with said application, shall be refunded or credited to the account of the applicant if said application does not receive approval. If the application is denied, the applicant shall be informed by telephone or telegram including the reasons for such denial. Telephone notification shall be confirmed immediately in writing.

[37 FR 274, Jan. 7, 1972, as amended at 49 FR 24511, June 14, 1984; 50 FR 24900, June 14, 1985 and 50 FR 32843, Aug. 15, 1985]

§ 930.103 Diversion.

Diversion shall be accomplished by: Processing restricted percentage cherries into juice or juice concentrate by pressing such cherries fresh or freezing them unpitted; processing restricted percentage cherries into dried products; or leaving restricted percentage cherries unharvested: *Provided,* That such cherries shall remain on the tree until final inspection and shall not be removed from the premises other than by record approval: *Provided further,* That unless an alternate method of tree selection is requested by an applicant and is approved by the Board, the trees involved with non-harvest shall be designated on a random basis by the Board through its authorized representatives. Trees involved with non-harvested diversion shall not be designated by the Board from blocks of trees aged 4 years or younger. Diversion may also be accomplished by exporting restricted percentage cherries

to foreign countries other than Canada or Japan.

[50 FR 24900, June 14, 1985 and 50 FR 32843, Aug. 15, 1985]

§ 930.104 Reserve pool requirements.

(a) Reserve pool cherries shall be set aside in the form of 5 plus 1 (five pounds of raw pitted cherries combined with one pound of sugar) frozen cherries packed in new 30 pound capacity metal cans or such other 30 pound capacity containers as may be prescribed by the board. Such cherries shall be graded and certified by the United States Department of Agriculture.

(b) Such cherries shall be (as specified in § 930.54(c)) stored separate and apart from all other frozen cherries and in accordance with good commercial practices with said certification and warehouse receipt stating lot and code number constituting proof of physical separation.

(c) Such cherries, for each handler who freezes cherries, shall reflect not less than the overall grade, quality, and condition of the total frozen production of said handler: *Provided,* That not less than 50 percent of said reserve pool cherries shall grade not lower than U.S. Grade A, and the remainder not lower than U.S. Grade B except that such cherries must meet the requirements for U.S. Grade A with respect to pits (52.801–52.812 of this title) unless otherwise exempted by the Board.

(d) Such cherries, for each handler who does not freeze cherries and therefore obtains reserve cherries from another handler who does freeze cherries, shall reflect not less than the overall grade, quality, and condition of the total frozen production of the handler who freezes such cherries: *Provided,* That not less than 50 percent of said reserve pool cherries shall grade not lower than U.S. Grade A, and the remainder not lower than U.S. Grade B except that such cherries must meet the requirements for U.S. Grade A with respect to pits (52.801–52.812 of this title) unless otherwise exempted by the Board.

[37 FR 274, Jan. 7, 1972, as amended at 39 FR 23988, June 28, 1974; 40 FR 27931, July 2, 1975; 49 FR 24511, June 14, 1984]

§ 930.105 Processing factor.

The factor (ratio of raw unpitted cherries to finished processed cherries, including sugar, i.e. in the form of 5 plus 1 frozen cherries as prescribed in § 930.104(a)) to be used in accordance with § 930.54(a) to determine the total amount of reserve pool cherries each handler shall set aside in the reserve pool shall be computed on the basis that each 33 pounds of raw unpitted cherries shall equal one 30-pound can of 5 plus 1 frozen cherries (25 pounds of raw pitted cherries combined with 5 pounds of sugar) for a ratio of 1.1 to 1: *Provided,* That for each handler who produces cherry juice the factor shall be computed on the basis that each 110 pounds of raw unpitted cherries used by such handler to produce the cherry juice shall equal one 30-pound can of the 5 plus 1 frozen cherries for a ratio of 11 to 3.

[37 FR 13789, July 14, 1972]

§ 930.106 Pack report.

Each handler, in accordance with § 930.62, shall submit to the Cherry Administrative Board at its office, or such other location as may be specified by the Board, within 30 days after date of pack completion, a written report of the total amount of cherries received for processing, showing separately the amount of cherries that were first handled.

[41 FR 21762, May 28, 1976]

§ 930.107 Assessment procedure.

(a) Each handler shall be billed for the first one-third of his total assessments on September 1, the second one-third of such assessments on October 1, and all remaining unpaid assessments on November 1.

(b) Each handler shall pay interest of one and one-half percent per month on any unpaid balance beginning 30 days after date of billing.

[38 FR 16331, June 22, 1973, as amended at 43 FR 8116, Feb. 28, 1978; 45 FR 78619, Nov. 26, 1980]

§ 930.109 Distribution of reserve pool proceeds.

(a) All proceeds from the sale of reserve pool cherries shall be placed in a

special reserve pool account, to be kept separate and apart from all other marketing order funds.

(b) All expenses incurred by the Board, in receiving, handling, holding, and disposing of reserve pool cherries shall be deducted from the proceeds from the sale of such cherries prior to any distribution of such funds to equity holders.

(c) In accordance with § 930.60 all reserve pool funds, after deductions, shall be distributed to equity holders in direct proportion to each person's equity in the total reserve pool. In the event of complete disposition of all reserve pool cherries, the Board may, prior to making distribution of the resulting funds, set aside a portion of such funds, not to exceed approximately $30,000, as a reserve to defray costs of storage and maintenance of records and supporting material of the pool.

(d) All prepaid storage fees shall be retained by the Board until complete disposition is made of all reserve pool cherries. Upon such disposition, any such unexpended fees shall be returned to the equity holders.

[38 FR 16331, June 22, 1973, as amended at 48 FR 38602, Aug. 25, 1983]

§ 930.110 After harvest adjustment and release period.

The 10-day period provided in § 930.53, paragraphs (a) and (b)(1) for the revision of percentages and release of reserve pool cherries, shall be one 10-day period between September 1 and December 1 of such fiscal period.

[48 FR 38602, Aug. 25, 1983]

§ 930.161 Exemptions granted.

(a) Cherries which are processed into products for use as coloring agents, such as that which is used in the manufacture of cosmetics, or into juice, are exempt from the provisions of §§ 930.52 through 930.60 as is authorized by § 930.61.

(b) The quantity of such exempted cherries shall be so designated on each handler's current pack report.

[37 FR 16169, Aug. 11, 1972, as amended at 48 FR 38603, Aug. 25, 1983]

NOTE: After January 1, 1979, "Budget of Expenses and Rate of Assessment" regulations (e.g., sections .200 through .299) and "Handling" regulations (e.g. sections, .300 through .399) which are in effect for a year or less, will not be carried in the Code of Federal Regulations. For FEDERAL REGISTER citations affecting these regulations, see the "List of CFR Sections Affected" in this volume.

§ 930.591 Conditions governing the sale of reserve pool cherries.

The procedure set forth in this section shall be applicable to cherries released from the reserve pool as a result of a revision of percentages pursuant to § 930.53(a) or release of reserve pool cherries pursuant to § 930.53(b).

(a) The Board, prior to any 10 day reserve pool release period, shall notify each handler of record by telephone, which notification shall be confirmed by registered letter, of the: method of sale; time and date of the release period; quantity of said handler's share of the reserve pool release which may be purchased by such handler; specific prices of such cherries if determined in advance, and the terms of the sale. Such terms of sale may include, but are not limited to: A delayed payment schedule; a discount based on the percentage of a handler's total share purchased; or a percentage allowance for brokerage fees. This shall be designated as the first offering.

(b) *Method of purchasing first offering cherries.* (1) If the price for first offering cherries has been established by the Board, each handler wishing to purchase such reserve pool cherries shall notify the Board, in person or by telephone, of the number of 30-pound containers or the percentage of this portion of reserve pool cherries such handler desires to purchase. Such handler shall confirm this offer in writing by letter or telegram at the Board's office or at such other location as may be designated by the Board. The confirmation shall be accompanied by a deposit of an amount to be determined by the Board, but not to exceed 30 percent of the estimated value of such cherries, for each 30 pounds of cherries such handler offers to purchase. Both the confirmation and the deposit must be received at the office of the

Board or at other locations within the production area as designated by the Board, within the first 72 hours of the release period. The total amount of the purchase price of such cherries shall be due within the payment schedule established by the Board. No cherries shall be released by the Board until after it has received payment of the full amount due for such cherries. If the full amount is not paid within the payment schedule established by the Board, the entire deposit for each 30 pounds of cherries shall be forfeited to the Board for the reserve pool account and the cherries shall remain in the reserve pool.

(2) If the method of sale is by bid basis, each handler wishing to purchase first offering reserve pool cherries shall notify the Board in person or by telephone, and confirm in writing by letter or telegram, of the number of 30 pound containers of reserve pool cherries such handler desires to purchase and the price per pound such handler offers to pay. Such bids shall be accompanied by a deposit of an amount to be determined by the Board, but not to exceed 30 percent of the estimated value of such cherries, for each 30 pounds of cherries such handler offers to purchase. Both the bids and the deposit must be received at the office of the Board or at other locations within the production area as designated by the Board, within the first 72 hours of the release period. After this period the Board shall specify the minimum acceptable price per pound of reserve pool cherries. All bids equal to or higher than the minimum acceptable price shall be confirmed at such minimum price. Deposits for bids lower than such minimum price shall be promptly returned to the handlers making such unaccepted bids. The total amount of the purchase price of all confirmed sales of cherries shall be due within the payment schedule established by the Board. No cherries shall be released by the Board until after it has received payment of the full amount due for such cherries. If the full amount is not paid within the payment schedule established by the Board, the entire deposit for each 30 pounds of cherries shall be forfeited to the Board for the reserve pool account and the cherries shall remain in the reserve pool.

(c) In the event there remains for sale a portion of first offering cherries, the Board shall, in the next 96 hour period within the 10 day release period, notify all handlers who purchased their portion of first offering reserve pool cherries, by telephone or telegram, of the quantity, the price, the grade composition of cherries remaining for purchase, and the terms of sale. Such terms of sale may include, but are not limited to: A delayed payment schedule; a discount based on the volume of cherries purchased, or a percentage allowance for brokerage fees. This shall be designated as the second offering.

(d) Each such handler who desires to purchase second offering cherries may do so within the remaining 72 hours of the 10 day release period. Such offer shall be made in the same manner as such handler's offer to purchase first offering cherries or at the minimum price established by the Board and the deposit amount established by the Board shall also apply to the offer to purchase second offering cherries. If the full amount is not paid within the aforesaid payment schedule, the entire deposit for each 30 pounds of cherries shall be forfeited to the Board for the reserve pool account and the cherries shall remain in the reserve pool. In the event offers to purchase exceed the quantity of cherries offered, the quantity each handler may purchase shall be prorated in accordance with the handler's participation in the reserve pool as compared with the total participation in the reserve pool by all handlers who have made an offer to purchase second offering cherries: *Provided,* That if the proportion of any handler exceeds the quantity such handler desires to purchase, such excess shall be apportioned on the foregoing basis among the remaining handlers who have expressed a desire to purchase second offering cherries.

(e) All monies due to handlers from any allowance or discount shall be refunded to such handlers after distribution of reserve pool proceeds in accordance with § 930.109.

[50 FR 24900, June 14, 1985 and 50 FR 32843, Aug. 15, 1985]

PART 931—FRESH BARTLETT PEARS GROWN IN OREGON AND WASHINGTON

Subpart—Order Regulating Handling

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AUTHORITY: Secs. 1-19, 48 Stat. 31, as amended; 7 U.S.C. 601-674.

SOURCE: 30 FR 12285, Sept. 25, 1965, unless otherwise noted.

Subpart—Order Regulating Handling

DEFINITIONS

§ 931.1 Secretary.

"Secretary" means the Secretary of Agriculture of the United States, or any officer or employee of the Department to whom authority has heretofore been delegated, or to whom authority may hereafter be delegated, to act in his stead.

§ 931.2 Act.

"Act" means Public Act No. 10, 73d Congress (May 12, 1933) as amended, and as reenacted and amended by the Agricultural Marketing Agreement Act of 1937, as amended (Secs. 1-19, 48 Stat. 31, as amended; 7 U.S.C. 601-674).

§ 931.3 Person.

"Person" means an individual, partnership, corporation, association, or any other business unit.

§ 931.4 Production area.

"Production area" means and includes the States of Oregon and Washington.

§ 931.5 Pears.

"Pears" means all pears grown in the production area classified botani-

cally as belonging to the Bartlett cultivar of Pyrus Communis.

§ 931.6 Variety.

"Variety" means any type or strain of pears which has distinctive attributes and is designated by a common name, such as Red Bartlett.

§ 931.7 Fiscal period.

"Fiscal period" means the period beginning July 1 of any year and ending June 30 of the following year or such other period as the committee, with the approval of the Secretary, may establish.

§ 931.8 Committee.

"Committee" means the Northwest Fresh Bartlett Pear Marketing Committee established pursuant to § 931.20.

§ 931.9 Grade.

"Grade" means any one of the officially established grades of pears as defined and set forth in:

(a) United States Standards for Summer and Fall Pears (7 CFR 51.1260 et seq.) or amendments thereto, or modifications thereof, or variations based thereon; or

(b) Standards for pears issued by the State of Oregon or the State of Washington or amendments thereto, or modifications thereof, or variations based thereon.

§ 931.10 Size.

"Size" means the number of pears which can be packed in a standard western pear box 18 inches long, 11⅝ inches wide, and 8½ inches deep (inside measurements) when packed in accordance with the packing requirements of the U.S. Standards for Summer and Fall Pears (effective August 20, 1955), or as such standards thereafter may be modified, or "Size" means the greatest transverse diameter of the pear taken at right angles to a line running from the stem to the blossom end, or such other specifications as may be established by the committee, with the approval of the Secretary.

§ 931.11 Grower.

"Grower" is synonymous with "producer" and means any person who produces pears for fresh market and who has a proprietary interest therein.

§ 931.12 Handler.

"Handler" is synonymous with "shipper" and means any person (except a common or contract carrier transporting pears owned by another person) who handles pears.

§ 931.13 Handle.

"Handle" or "ship" means to sell, deliver, consign, or transport pears within the production area or between the production area and any point outside thereof: *Provided,* That the term "handle" shall not include the transportation within the production area from the orchard where grown to a packing facility located within such area for preparation for market.

§ 931.14 District.

"District" means the applicable one of the following described subdivisions of the production area, or such other subdivisions as may be prescribed pursuant to § 931.31(m):

(a) Wenatchee District shall include the counties of King, Chelan, Douglas, Grant, Lincoln, Spokane in the State of Washington, and all other counties in Washington lying north thereof.

(b) Yakima District shall include all of the State of Washington not included in the Wenatchee District or in the Hood River-White Salmon District.

(c) Mid-Columbia District or the Hood River-White Salmon District shall include those counties in the State of Oregon not included in the Medford District and the counties of Skamania and Klickitat in the State of Washington.

(d) Medford District shall include the Counties of Jackson, Josephine, Curry, Coos, Douglas, Lane, and Klamath in the State of Oregon.

§ 931.15 Export.

"Export" means to ship pears to any destination which is not within the 48 contiguous States, or the District of Columbia of the United States.

§ 931.16 Pack.

"Pack" means the specific arrangement, size, weight, count, or grade of a quantity of pears in a particular type and size of container, or any combination thereof.

§ 931.17 Container.

"Container" means a box, bag, crate, lug, basket, carton, package, or any other type of receptacle used in the packaging or handling of pears.

ADMINISTRATIVE BODY

§ 931.20 Establishment and membership.

There is hereby established a Northwest Fresh Bartlett Pear Marketing Committee consisting of fourteen (14) members, each of whom shall have an alternate who shall have the same qualifications as the member for whom his is an alternate. Eight (8) of the members and their respective alternates shall be growers or officers or employees of growers. Six (6) of the members and their respective alternates shall be handlers or officers or employees of handlers. Each district shall be represented on the committee by two (2) grower members and their respective alternates who are producers of pears in such districts. The Yakima and Medford Districts shall each be represented on the committee by two (2) handler members and the Wenatchee and Mid-Columbia Districts each by one (1) handler member who are handlers of pears in the respective district.

§ 931.21 Term of office.

The term of office of each member and alternate member of the committee shall be for two years beginning July 1 and ending June 30: *Provided,* That the term of office of one-half of the initial grower members and alternates and one-half of the initial handler members and alternates from the Yakima and Medford Districts and the handler member and alternate from the Wenatchee District shall end June 30, 1966. Members and alternate members shall serve in such capacities for the portion of the term of office for which they are selected and have qualified and until their respective successors are selected and have qualified.

§ 931.22 Nomination.

(a) *Initial members.* Nominations for each of the initial members of the committee, together with nominations for the initial alternate members for each position, may be submitted to the Secretary by individual growers and handlers. Such nominations may be made by means of separate group meetings of the growers and handlers concerned in each district, which shall be publicized and open to all growers and handlers. Such nominations, if made, shall be filed with the Secretary no later than the effective date of this part. In the event nominations for initial members and alternate members of the committee are not filed pursuant to, and within the time specified in this section, the Secretary may select such initial members and alternate members without regard to nominations, but selections shall be on the basis of the representation provided for in § 931.20.

(b) *Successor members.* (1) The committee shall hold or cause to be held, not later than June 1 of each year, separate meetings of growers and handlers in each district for the purpose of designating nominees for successor members and alternate members of the committee, which shall be publicized and open to all growers and handlers. At each such meeting, a chairman and a secretary shall be designated by the growers and handlers eligible to participate therein. The chairman shall announce at the meeting the results of nominations for member or alternate member and shall submit promptly to the committee a complete report concerning such meeting. The committee shall, in turn, promptly submit a copy of each such report to the Secretary.

(2) Only growers, including duly authorized officers or employees of growers, who are present at such nomination meetings may participate in the nomination and election of nominees for grower members and their alternates. Each grower shall be entitled to cast only one vote for each nominee to be elected in the district in which he

produces pears. No grower shall participate in the election of nominees in more than one district in any one fiscal year. If a person is both a grower and a handler of pears, such person may vote either as a grower or as a handler but not as both.

(3) Only handlers, including duly authorized officers or employees of handlers, who are present at such nomination meetings may participate in the nomination and election of nominees for handler members and their alternates. Each handler shall be entitled to cast only one vote for each nominee to be elected in the district in which he handles pears. No handler shall participate in the election of nominees in more than one district in any one fiscal year. If a person is both a grower and a handler of pears, such person may vote either as a grower or as a handler but not as both.

§ 931.23 Selection.

From the nominations made pursuant to § 931.22 or from other qualified persons, the Secretary shall select the eight grower members of the committee, the six handler members of the committee, and an alternate for each such member.

§ 931.24 Failure to nominate.

If nominations are not made within the time and in the manner prescribed in § 931.22, the Secretary may, without regard to nominations, select the members and alternate members of the committee on the basis of the representation provided for in § 931.20.

§ 931.25 Acceptance.

Any person selected by the Secretary as a member or as an alternate member of the committee shall qualify by filing a written acceptance with the Secretary promptly after being notified of such selection.

§ 931.26 Vacancies.

To fill any vacancy occasioned by the failure of any person selected as a member or as an alternate member of the committee to qualify, or in the event of the death, removal, resignation, or disqualification of any member or alternate member of the committee, a successor for the unexpired term of such member or alternate member of the committee shall be nominated and selected in the manner specified in §§ 931.22 and 931.23. If the names of nominees to fill any such vacancy are not made available to the Secretary within a reasonable time after such vacancy occurs the Secretary may fill such vacancy without regard to nominations, which selection shall be made on the basis of representation provided for in § 931.20.

§ 931.27 Alternate members.

An alternate member of the committee, during the absence or at the request of the member for whom he is an alternate, shall act in the place and stead of such member and perform such other duties as assigned. In the event of the death, removal, resignation, or disqualification of a member, his alternate shall act for him until a successor for such member is selected and has qualified. In the event both a member of the committee and his alternate are unable to attend a committee meeting, the member or the committee may designate any other alternate member from the same district and group (handler or grower) to serve in such member's place and stead.

§ 931.30 Powers.

The committee shall have the following powers:

(a) To administer the provisions of this part in accordance with its terms;

(b) To receive, investigate, and report to the Secretary complaints of violations of the provisions of this part;

(c) To make and adopt rules and regulations to effectuate the terms and provisions of this part; and

(d) To recommend to the Secretary amendments to this part.

§ 931.31 Duties.

The committee shall have, among others, the following duties:

(a) To select a chairman and such other officers as may be necessary, and to define the duties of such officers;

(b) To appoint such employees, agents, and representatives as it may deem necessary, and to determine the

compensation and to define the duties of each;

(c) To submit to the Secretary as soon as practicable after the beginning of each fiscal period a budget for such fiscal period, including a report in explanation of the items appearing therein and a recommendation as to the rate of assessment for such period;

(d) To keep minutes, books, and records which will reflect all of the acts and transactions of the committee and which shall be subject to examination by the Secretary;

(e) To prepare periodic statements of the financial operations of the committee and to make copies of each such statement available to growers and handlers for examination at the office of the committee;

(f) To cause its books to be audited by a competent accountant at least once each fiscal year and at such time as the Secretary may request;

(g) To act as intermediary between the Secretary and any grower or handler;

(h) To investigate and assemble data on the growing, handling, and marketing conditions with respect to pears;

(i) To submit to the Secretary such available information as he may request;

(j) To notify producers and handlers of all meetings of the committee to consider recommendations for regulations;

(k) To give the Secretary the same notice of meetings of the committee as is given to its members;

(l) To investigate compliance with the provisions of this part; and

(m) With the approval of the Secretary to redefine the districts into which the production area is divided, and to reapportion the representation of any district on the committee: *Provided,* That any such changes shall reflect, insofar as practicable, shifts in pear production within the districts and the production area.

§ 931.32 Procedure.

(a) Twelve members of the committee, including alternates acting for members, shall constitute a quorum, and any action of the committee shall require the concurring vote of all except two of the members present.

(b) The committee may provide for simultaneous meetings of groups of its members assembled at two or more designated places: *Provided,* That such meetings shall be subject to the establishment of communication between all such groups and the availability of loud speaker receivers for each group so that each member may participate in the discussions and other actions the same as if the committee were assembled in one place. Any such meeting shall be considered as an assembled meeting.

(c) The committee may vote by telegraph, telephone, or other means of communication, and any votes so cast shall be confirmed promptly in writing: *Provided,* That if an assembled meeting is held, all votes shall be cast in person.

§ 931.33 Expenses.

The members of the committee and alternates when acting as members, shall be reimbursed for expenses necessarily incurred by them in the performance of their duties under this part: *Provided,* That at its discretion the committee may request the attendance of one or more alternates at any or all meetings, notwithstanding the expected or actual presence of the respective members, and may pay expenses as aforesaid.

§ 931.34 Annual report.

The committee shall, as soon as is practicable after the close of each fiscal period, prepare and mail an annual report to the Secretary and make a copy available to each handler and grower who requests a copy of the report. This annual report shall contain at least: (a) A complete review of the regulatory operations during the fiscal period; (b) a review of the effect of such regulatory operations upon the pear industry; and (c) any recommendations for changes in the program.

Expenses and Assessments

§ 931.40 Expenses.

The committee is authorized to incur such expenses as the Secretary finds are reasonable and likely to be

incurred by the committee for its maintenance and functioning and to enable it to exercise its powers and perform its duties in accordance with the provisions of this part during each fiscal period. The funds to cover such expenses shall be acquired by the levying of assessments as prescribed in § 931.41.

§ 931.41 Assessments.

(a) Each person who first handles pears shall, with respect to the pears so handled by him, pay to the committee upon demand such person's pro rata share of the expenses which the Secretary finds will be incurred by the committee during each fiscal period. Each such person's share of such expenses shall be equal to the ratio between the total quantity of pears handled by him as the first handler thereof during the applicable fiscal period and the total quantity of pears so handled by all persons during the same fiscal period. The payment of assessments for the maintenance and functioning of the committee may be required under this part throughout the period it is in effect irrespective of whether particular provisions thereof are suspended or become inoperative.

(b) The Secretary shall fix the rate of assessment to be paid by each such person. At any time during or after the fiscal period, the Secretary may increase the rate of assessment in order to secure sufficient funds to cover any later finding by the Secretary relative to the expenses which may be incurred. Such increase shall be applied to all pears handled during the applicable fiscal period. In order to provide funds for the administration of the provisions of this part during the first part of a fiscal period before sufficient operating income is available from assessments on the current year's shipments, the committee may accept the payment of assessments in advance, and may also borrow money for such purpose.

§ 931.42 Accounting.

(a) If, at the end of a fiscal period, the assessments collected are in excess of expenses incurred, such excess shall be accounted for as follows:

(1) Except as provided in paragraphs (a) (2) and (3) of this section, each person entitled to a proportionate refund of any excess assessment shall be credited with such refund against the operation of the following fiscal period unless such person demands repayment thereof, in which event it shall be paid to him: *Provided*, That any sum paid by a person in excess of his pro rata share of the expenses during any fiscal period may be applied by the committee at the end of such fiscal period to any outstanding obligations due the committee from such person.

(2) The committee, with the approval of the Secretary, may establish and maintain during one or more fiscal years an operating monetary reserve in an amount not to exceed approximately one fiscal year's operational expenses. Upon approval by the Secretary, funds in such reserve shall be available for use by the committee for all expenses authorized pursuant to § 931.40.

(3) Upon termination of this part, any funds not required to defray the necessary expenses of liquidation shall be disposed of in such manner as the Secretary may determine to be appropriate: *Provided*, That to the extent practical, such funds will be returned pro rata to the persons from whom such funds were collected.

(b) All funds received by the committee pursuant to the provisions of this part shall be used solely for the purposes specified in this part and shall be accounted for in the manner provided in this part. The Secretary may at any time require the committee and its members to account for all receipts and disbursements.

(c) Upon the removal or expiration of the term of office of any member of the committee, such member shall account for all receipts and disbursements and deliver all property and funds in his possession to his successor in office and shall execute such assignments and other instruments as may be necessary or appropriate to vest in such successor full title to all of the property, funds and claims vested in such member pursuant to this part.

RESEARCH

§ 931.45 Marketing research and development.

The committee, with the approval of the Secretary, may establish or provide for the establishment of marketing research and development projects designed to assist, improve, or promote the marketing, distribution, and consumption of pears. The expense of such projects shall be paid from funds collected pursuant to § 931.41.

REGULATIONS

§ 931.50 Marketing policy.

(a) Each season prior to making any recommendations pursuant to § 931.51, the committee shall submit to the Secretary a report setting forth its marketing policy for the ensuing season. Such marketing policy report shall contain information relative to:

(1) The estimated total production of pears within the production area;

(2) The expected general quality and size of pears in the production area and in other areas;

(3) The expected demand conditions for pears in different market outlets;

(4) The expected shipments of pears produced in the production area and in areas outside the production area;

(5) Supplies of competing commodities;

(6) Trend and level of consumer income;

(7) Other factors having a bearing on the marketing of pears; and

(8) The type of regulations expected to be recommended during the season.

(b) In the event it becomes advisable, because of changes in the supply and demand situation for pears, to modify substantially such marketing policy, the committee shall submit to the Secretary a revised marketing policy report setting forth the information prescribed in this section. The committee shall maintain in its office a copy of each marketing policy report, including each revised marketing policy reports, where they may be available to growers and handlers, and may also by means of a press release or other means announce the substance thereof.

§ 931.51 Recommendations for regulation.

(a) Whenever the committee deems it advisable to regulate the handling of any variety or varieties of pears in the manner provided in § 931.52, it shall so recommend to the Secretary.

(b) In arriving at its recommendations for regulation pursuant to paragraph (a) of this section, the committee shall give consideration to current information with respect to the factors affecting the supply and demand for pears during the period or periods when it is proposed that such regulation should be made effective. With each such recommendation for regulation, the committee shall submit to the Secretary the data and information on which such recommendation is predicated and such other available information as the Secretary may request.

§ 931.52 Issuance of regulations.

(a) The Secretary shall regulate, in the manner specified in this section, the handling of pears whenever he finds, from the recommendations and information submitted by the committee, or from other available information, that such regulation will tend to effectuate the declared policy of the act. Such regulation may:

(1) Limit, during any period or periods, the shipment of any particular grade, size, quality, or pack, or any combination thereof, of any variety or varieties of pears grown in any district or districts of the production area;

(2) Limit the shipment of pears by establishing, in terms of grades, sizes, or both, minimum standards of quality during any period when the season average price is expected to exceed the parity level;

(3) Fix the size, capacity, weight, dimensions, or pack of the container, or containers, which may be used in packaging or handling of pears: *Provided,* That no regulations shall prohibit the use of the 14-pound box or the standard western pear box; and

(4) Prescribe requirements, as provided in this paragraph, applicable to exports of any variety of pears which are different from those applicable to the handling of the same variety to other destinations.

(b) The committee shall be informed immediately of any such regulation issued by the Secretary, and the committee shall promptly give notice thereof to growers and handlers.

§ 931.53 Modification, suspension, or termination of regulations.

(a) In the event the committee at any time finds that, by reason of changed conditions, any regulations issued pursuant to § 931.52 should be modified, suspended, or terminated, it shall so recommend to the Secretary.

(b) Whenever the Secretary finds, from the recommendations and information submitted by the committee or from other available information, that a regulation should be modified, suspended, or terminated with respect to any or all shipments of pears in order to effectuate the declared policy of the act, he shall modify, suspend, or terminate such regulation. On the same basis and in like manner, the Secretary may terminate any such modification or suspension. If the Secretary finds that a regulation obstructs or does not tend to effectuate the declared policy of the act, he shall suspend or terminate such regulation. On the same basis and in like manner the Secretary may terminate any such suspension.

§ 931.54 Special purpose and minimum quantity shipments.

(a) Except as otherwise provided in this section, any person may, without regard to the provisions of § 931.41, § 931.52, § 931.53 and § 931.55, and the regulations issued thereunder, handle pears (1) for consumption by charitable institutions; (2) for distribution by relief agencies; or (3) for commercial processing into products.

(b) Upon the basis of recommendations and information submitted by the Committee, or from other available information, the Secretary may relieve from any or all requirements under or established pursuant to §§ 931.41, 931.52, 931.53, or 931.55, the handling of pears in such minimum quantities, in such types of shipments, including gift fruit shipments, or for such specified purposes (including shipments to facilitate the conduct of marketing research and development projects established pursuant to § 931.45) as the committee, with the approval of the Secretary, may prescribe.

(c) The committee shall, with the approval of the Secretary prescribe such rules, regulations, and safeguards as it may deem necessary to assure compliance with this section. Such rules, regulations, and safeguards may include the requirements that handlers shall file applications and receive approval from the committee for authorization to handle pears pursuant to this section. It may be required that such applications be accompanied by a certification by the intended purchaser or receiver that the pears will not be used for any purpose not authorized by this section.

§ 931.55 Inspection and certification.

Whenever the handling of any variety of pears is regulated pursuant to § 931.52 or § 931.53, each handler who handles pears shall, prior thereto, cause such pears to be inspected by the Federal or Federal-State Inspection Service and certified by it as meeting the applicable requirements of such regulation: *Provided*, That inspection and certification shall be required for pears which previously have been so inspected and certified only if such pears have been regarded, resorted, repackaged, or in any other way further prepared for market. Promptly after inspection and certification, each such handler shall submit or cause to be submitted to the committee a copy of the certificate of inspection issued with respect to such pears. The committee may, with the approval of the Secretary, prescribe rules and regulations modifying the inspection requirements of this section as to time and place such inspection shall be performed whenever it is determined it would not be practical to perform the required inspection at a particular location: *Provided*, That all such shipments shall comply with all regulations in effect.

§ 931.56 Exemptions.

The committee shall issue certificates of exemption to any producer who applies for such exemption and

furnishes adequate evidence to the committee:

(a) That by reason of a regulation he will be prevented from handling or having handled as large a proportion of his production as the average proportion of production handled by or for all producers in said applicant's production district; and

(b) That the grade, size, or quality of the applicant's pears have been adversely affected by acts beyond the applicant's reasonable expectation or control. Each certificate shall permit the producer to handle or to have handled the amount of pears specified thereon. Such certificates shall be transferred with such pears at time of shipment. The committee shall be permitted at any time to make a thorough investigation of any producer's claim for exemptions and shall determine what conditions constitute acts beyond the grower's reasonable expectation or control.

Reports

§ 931.60 Reports.

(a) Upon request of the committee, made with the approval of the Secretary, each handler shall furnish to the committee, in such manner and at such time as it may prescribe, reports of pears received and disposed of and such other information as may be necessary for the committee to perform its duties under this part.

(b) All such reports shall be held under appropriate protective classification and custody by the committee, or duly appointed employees thereof, so that the information contained therein which may adversely affect the competitive position of any handler in relation to other handlers will not be disclosed. Compilations of general reports from data submitted by handlers are authorized subject to the prohibition of disclosure of individual handler's identities or operations.

(c) Each handler shall maintain for at least two succeeding years such records of the pears received and of pears disposed of, by such handler as may be necessary to verify reports pursuant to this section.

Miscellaneous Provisions

§ 931.61 Compliance.

Except as provided in this part, no person shall handle pears the shipment of which has been prohibited by the Secretary in accordance with the provisions of this part; and no person shall handle pears except in conformity with the provisions and the regulations issued under this part.

§ 931.62 Right of the Secretary.

The members of the committee (including successors and alternates), and any agents, employees, or representatives thereof, shall be subject to removal or suspension by the Secretary at any time. Each and every regulation, decision, determination, or other act of the committee shall be subject to the continuing right of the Secretary to disapprove of the same at any time. Upon such disapproval, the disapproved action of the committee shall be deemed null and void, except as to acts done in reliance thereon or in accordance therewith prior to such disapproval by the Secretary.

§ 931.63 Effective time.

The provisions of this part and of any amendments thereto shall become effective at such time as the Secretary may declare above his signature, and shall continue in force until terminated in one of the ways specified in § 931.64.

§ 931.64 Termination.

(a) The Secretary may at any time terminate the provisions of this part by giving at least one day's notice by means of a press release or in any other manner in which he may determine.

(b) The Secretary shall terminate or suspend the operation of any and all of the provisions of this part whenever he finds that such provisions do not tend to effectuate the declared policy of the act.

(c) The Secretary shall terminate the provisions of this part at the end of any fiscal period whenever he finds by a referendum or otherwise that continuance is not favored by the majority of producers who, during a rep-

resentative period determined by the Secretary, were engaged in the production area in the production of pears for market in fresh form: *Provided,* That such majority has produced for market during such period more than 50 percent of the volume of pears produced for fresh market in the production area; but such termination shall be effective only if announced on or before June 30 of the then current fiscal period: *Provided further,* That the Secretary shall conduct such a referendum not later than 5 years from the effective date of this part.

(d) The provisions of this part shall, in any event, terminate whenever the provisions of the act authorizing them cease to be in effect.

§ 931.65 Proceedings after termination.

(a) Upon the termination of the provisions of this part, the committee shall, for the purpose of liquidating the affairs of the committee, continue as trustees of all the funds and property then in its possession, or under its control, including claims for any funds unpaid or property not delivered at the time of such termination.

(b) The said trustees shall (1) continue in such capacity until discharged by the Secretary; (2) from time to time account for all receipts and disbursements and deliver all property on hand, together with all books and records of the committee and of the trustees, to such persons as the Secretary may direct; and (3) upon the request of the Secretary, execute such assignments or other instruments necessary or appropriate to vest in such person, full title and right to all of the funds, property, and claims vested in the committee or the trustees pursuant thereto.

(c) Any person to whom funds, property, or claims have been transferred or delivered, pursuant to this section, shall be subject to the same obligation imposed upon the committee and upon the trustees.

§ 931.66 Effect of termination or amendment.

Unless otherwise expressly provided by the Secretary, the termination of this part or of any regulation issued pursuant to this part, or the issuance of any amendment to either thereof, shall not (a) affect or waive any right, duty, obligation, or liability which shall have arisen or which may thereafter arise in connection with any provision of this part or any regulation issued under this part, or (b) release or extinguish any violation of this part or of any regulation issued under this part, or (c) affect or impair any rights or remedies of the Secretary or of any other person with respect to any such violation.

§ 931.67 Duration of immunities.

The benefits, privileges, and immunities conferred upon any person by virtue of this part shall cease upon the termination of this part, except with respect to acts done under and during the existence of this part.

§ 931.68 Agents.

The Secretary may, by designation in writing, name any officer or employee of the United States, or name any agency or division in the U.S. Department of Agriculture, to act as his agent or representative in connection with any of the provisions of this part.

§ 931.69 Derogation.

Nothing contained in the provisions of this part is, or shall be construed to be, in derogation or in modification of the rights of the Secretary or of the United States (a) to exercise any powers granted by the act or otherwise, or (b) in accordance with such powers, to act in the premises whenever such action is deemed advisable.

§ 931.70 Personal liability.

No member or alternate member of the committee and no employee or agent of the committee shall be held personally responsible, either individually or jointly with others, in any way whatsoever, to any person for errors in judgment, mistakes, or other acts, either of commission or omission, as such member, alternate, employee, or agent, except for acts of dishonesty, willful misconduct, or gross negligence.

§ 931.71 Separability.

If any provision of this part is declared invalid or the applicability thereof to any person, circumstance, or thing is held invalid, the validity of the remainder of this part or the applicability thereof to any other person, circumstance, or thing shall not be affected thereby.

NOTE: After January 1, 1979, "Budget of Expenses and Rate of Assessment" regulations (e.g. sections .200 through .299) and "Handling" regulations (e.g., sections .300 through .399) which are in effect for a year or less, will not be carried in the Code of Federal Regulations. For FEDERAL REGISTER citations affecting these regulations, see the "List of CFR Sections Affected" in this volume.

PART 932—OLIVES GROWN IN CALIFORNIA

Subpart—Order Regulating Handling

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AUTHORITY: Secs. 1-19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

SOURCE: 30 FR 12629, Oct. 2, 1965, unless otherwise noted.

Subpart—Order Regulating Handling

DEFINITIONS

§ 932.1 Secretary.

"Secretary" means the Secretary of Agriculture of the United States, or any officer or employee of the U.S. Department of Agriculture who is or who may hereafter be authorized to exercise the powers or to perform the duties of the Secretary of Agriculture.

§ 932.2 Act.

"Act" means Public Act No. 10, 73d Congress (May 12, 1933) as amended and as reenacted and amended by the Agricultural Marketing Agreement Act of 1937, as amended (48 Stat. 31, as amended; 7 U.S.C. 601–674).

§ 932.3 Person.

"Person" includes an individual, partnership, corporation, association, or any other business unit.

§ 932.4 Area.

"Area" means the State of California.

§ 932.5 Olives.

"Olives" means the fruit of any variety of the species olea europaea, whether or not processed, grown within the area.

§ 932.6 Variety group 1.

"Variety group 1" means the following varieties and any mutations, sports, or other derivations of such varieties: Aghizi Shami, Amellau, Ascolano, Ascolano dura, Azapa, Balady, Barouni, Carydolia, Cucco, Gigante di Cerignola, Gordale, Grosane, Jahlut, Polymorpha, Prunara, Ropades, Sevillano, Saint Agostino, Tafahi, and Touffahi.

§ 932.7 Variety group 2.

"Variety group 2" means the following varieties and any mutations, sports, or other derivations of such varieties: Manzanillo, Mission, Nevadillo, Obliza, Redding Picholine.

§ 932.8 Natural condition olives.

"Natural condition olives" means olives in their fresh harvested state, whether or not placed in a water or other preserving medium.

[33 FR 11266, Aug. 8, 1968]

§ 932.9 Packaged olives.

"Packaged olives" means (a) processed olives in hermetically sealed containers and heat sterilized under pressure, otherwise known as "canned ripe olives" and including the three distinct types, "ripe," "green ripe," and "tree-ripened"; or (b) olives, packed in brine, and which have been fermented and cured, otherwise known as "green olives."

§ 932.10 Lot.

"Lot" means the total net weight of natural condition olives of any one variety delivered to a handler at any one time.

§ 932.11 Grade.

"Grade" means the classification of olives as to quality according to the grading specifications established pursuant to the provisions of this part.

§ 932.12 Size.

"Size" means the number of whole olives contained in a pound and may be referred to in terms of size ranges.

§ 932.13 Size-grade.

"Size-grade" means to classify olives, or to cause olives to be classified, by sample or otherwise, into separate size designations.

§ 932.14 Process.

"Process" means to change olives in any way from their natural condition by any commercial process.

§ 932.15 Handl

"Handler" means any person who handles olives.

§ 932.16 Handle.

"Handle" means to: (a) Size-grade olives, (b) process olives, or (c) use processed olives in the production of packaged olives, within the production area, or (d) ship packaged olives from the area to any point outside thereof or within the area: *Provided,* This term shall not include natural condition olives acquired and (1) used for olive oil, salt cured oil coated olives (also variously referred to as "Greek Olives," "Greek Style Olives," or "Oil Cured Olives"), or Silician Style Olives, or (2) shipped to fresh market outlets.

[36 FR 20356, Oct. 21, 1971]

§ 932.17 Producer.

"Producer" means any person engaged in a proprietary capacity in the production of olives for market as packaged olives.

§ 932.18 Committee.

"Committee" means the California Olive Committee established pursuant to § 932.25.

[47 FR 32906, July 30, 1982]

§ 932.19 Crop year and fiscal year.

(a) "Crop year" means the 12-month period beginning on August 1 of each year and ending on July 31 of the following year or such other period that may be recommended by the committee and approved by the Secretary.

(b) "Fiscal year" means the 12-month period beginning on Janaury 1 and ending on December 31 of each year or such other period that may be recommended by the committee and approved by the Secretary.

[47 FR 32906, July 30, 1982]

§ 932.20 Part and subpart.

"Part" means the Order Regulating the Handling of Olives Grown in California and all rules and regulations, and supplementary orders issued thereunder. The aforesaid Order Regulating the Handling of Olives Grown in California shall be a "subpart" of such part.

§ 932.21 District.

"District" means any of the following geographical areas of the State of California:

(a) "District 1" shall include the counties of Glenn, Tehama, and Shasta.

(b) "District 2" shall include the counties of Mono, Mariposa, Merced, San Benito, Monterey, Madera, Fresno, Tulare, and all counties to the south thereof.

(c) "District 3" shall include all counties not included in Districts 1 and 2.

§ 932.22 Sublot.

"Sublot" means a quantity of olives resulting from the separation by the handler of a lot into two or more parts.

[36 FR 20356, Oct. 21, 1971]

§ 932.23 Undersize olives and limited use size olives.

"Undersize olives" means olives of a size which, pursuant to § 932.51(a)(3), shall be disposed of in noncanning use; and "limited use size olives" means processed olives of any size which, pursuant to § 932.52(a)(3), is authorized for limited use.

[36 FR 20356, Oct. 21, 1971, as amended at 47 FR 32906, July 30, 1982]

§ 932.23a Limited use.

"Limited use" means the use of processed olives in the production of packaged olives of the halved, segmented (wedged), sliced, or chopped styles, as defined in the U.S. Standards for Grades of Canned Ripe Olives (7 CFR Part 52) or subsequent amendments thereto, including modifications of the requirements for such styles pursuant to this part, and such additional styles (and the requirements applicable thereto) as may be specified pursuant to § 932.52(a)(7).

[47 FR 32906, July 30, 1982]

§ 932.24 Noncanning use.

"Noncanning use" means the use of olives other than in the production of canned ripe olives, and is the authorized outlet for undersize olives and the limited use size olives which, pursuant to § 932.52(b), are not permitted for limited use in any crop year in which limited use is restricted to less than the available quantity of limited use size olives.

[36 FR 20356, Oct. 21, 1971]

OLIVE ADMINISTRATIVE COMMITTEE

§ 932.25 Establishment and membership.

A California Olive Committee consisting of 16 members, is hereby established to administer the terms and provisions of this part. Each member shall have an alternate who meets the same qualifications as the member. Eight of the members and their alternates shall be producers or officers or employees of producers, and eight of the members and their alternates shall be handlers or directors, officers, or employees of handlers. The eight members of the committee who are producers or officers or employees of producers are referred to in this subpart as "producer members" of the committee; and the eight members of the committee who are handlers or directors, officers, or employees of handlers are referred to in this subpart as "handler members" of the committee. The committee may be increased by one public member who shall not be a producer or handler of olives nor an officer or employee or director of any producer or handler of olives. District representation of the producer members shall be two from District 1, four from District 2, and two from District 3. Allocation of the handler members shall be four members to represent cooperative marketing organizations, herein referred to as "cooperative handlers", and four members to represent handlers who are not cooperative marketing organizations, herein referred to as "independent handlers": *Provided*, That whenever during the crop year in which nominations are made and in the preceding crop year, the cooperative handlers or the independent handlers handled as first handler 65 percent or more of the total quantity of olives so handled by all handlers, allocation shall be five members to represent the group which so handled 65 percent or more of such olives and three members to represent the group which handled 35 percent or less. The public member and alternate public member shall be selected from any place within the area. The committee may, with the approval of the Secretary, provide such other allocation of producer or handler membership, or both, as may be necessary to assure equitable representation.

[47 FR 32907, July 30, 1982]

§ 932.26 Term of office.

The term of office of members and alternate members of the committee shall be 2 years beginning on June 1 and ending on May 31 of odd numbered years: *Provided*, That the term of office of initial members and alternate members shall begin on the effective date of this subpart. Each such member and alternate member shall serve during that portion of the term of office for which he is selected and has qualified and shall continue to serve until his successor is selected and has qualified.

§ 932.27 Selection.

Selection of members of the committee, and their respective alternates, shall be made in the appropriate numbers specified in § 932.25 by the Secretary from nominees nominated pursuant to this part or, in the discretion of the Secretary, from other persons eligible for nominations for such positions.

§ 932.28 Eligibility.

Each producer member of the committee shall, at the time of selection and during the member's term of office, be a producer in the district for which selected, and except for producers who are members of cooperative handlers shall not be engaged in the handling of olives either in a proprietary capacity, or as a director, officer, or employee. Each handler member of the committee shall, at the time of selection and during the member's term of office, be a handler in the group that the member represents or a direc-

tor, officer, or employee of such handler. The public member and alternate public member of the committee shall not at the time of selection and during the term of office be engaged in or have a financial interest in the commercial production, marketing, buying, grading, or processing of olives, nor shall such member or alternate be an officer, director, member, or employee of any firm engaged in such activities.

[47 FR 32907, July 30, 1982]

§ 932.29 Nominations.

(a) Producer members. (1) Nominations for producer members of the committee, and their respective alternates, may be conducted according to the following procedures, or other procedures recommended by the committee and approved by the Secretary:

(i) Meetings shall be held in each producer district for the purpose of selecting candidates for the member and alternate member nominations;

(ii) Those candidates selected at the producer meetings shall be nominated by mail balloting of producers in that district;

(iii) The committee shall adopt, with approval of the Secretary, appropriate procedures to be observed for conducting producer nominations by mail: *Provided,* That the names of nominees shall be submitted to the Secretary prior to April 16 of the year in which nominations are made.

(2) Only producers, including duly authorized officers or employees of producers, shall participate in the nomination of producer members and alternate members. Each producer shall be entitled to cast only one vote for each nominee to be selected in the district in which the producer produces olives. No producer shall participate in the selection of nominees in more than one district. If a producer produces olives in more than one district, such producer shall select the district in which such producer will so participate and notify the committee of such choice.

(b) *Handler members.* (1) At a meeting or meetings called by the committee, the cooperative handlers shall nominate a qualified person for each member position and a qualified person for each alternate member position allocated to cooperative handlers as provided in § 932.25.

(2) At a meeting or meetings called by the committee, the independent handlers shall nominate a qualified person for each member position and a qualified person for each alternate member position allocated to independent handlers as provided in § 932.25.

(3) Each handler shall be entitled to cast only one vote for each nominee for cooperative handler member or alternate member or independent handler member or alternate member, as the case may be, which vote shall be weighed by the tonnages of olives handled by such handler during the crop year in which nominations are made and in the previous crop year.

(c) Public member. Nominations for the public member and alternate public member of the committee shall be submitted to the Secretary prior to April 16 of the year in which nominations are made. The committee shall prescribe procedures for the selection and voting for each candidate.

[33 FR 11266, Aug. 8, 1968, as amended at 47 FR 32907, July 30, 1982]

§ 932.30 Alternates.

An alternate for a member of the committee shall act in the place and stead of such member (a) during such member's absence, and (b) in the event of such member's removal, resignation, disqualification or death, until a successor for such member's unexpired term has been selected and has qualified. Except as otherwise specifically provided in this subpart, the provisions of this part applicable to members also apply to alternate members. The committee or the chariman of the committee may request one or more alternates to attend any or all meetings notwithstanding the expected or actual attendance of the respective member or members.

[47 FR 32907, July 30, 1982]

§ 932.31 Failure to nominate.

If nominations for any position on the committee are not received by the Secretary by May 1 of the year in which nominations are to be made, the

Secretary may select an eligible individual without regard to nomination.

§ 932.32 Acceptance.

Any person selected by the Secretary as a member or as an alternate member of the committee shall qualify by filing a written acceptance with the Secretary promptly after being notified of such selection.

§ 932.33 Vacancies.

To fill any vacancy occasioned by the failure of any person selected as a member, or as an alternate member of the committee to qualify, or in the event of the removal, resignation, disqualification, or death of any member or alternate member, a successor for such person's unexpired term shall be nominated and selected in the manner set forth in § 932.29 insofar as such provisions are applicable. If nomination to fill any such vacancy is not made within 60 calendar days after such vacancy occurs, the Secretary may fill such vacancy without regard to nominations, but on the basis of the applicable representations and qualifications set forth in §§ 932.25, 932.27, and 932.28.

§ 932.34 Powers.

The committee shall have the following powers:

(a) To administer this subpart in accordance with its terms and provisions;

(b) To make rules and regulations to effectuate the terms and provisions of this subpart;

(c) To receive, investigate, and report to the Secretary complaints of violations of the provisions of this subpart; and

(d) To recommend to the Secretary amendments to this subpart.

§ 932.35 Duties.

The committee shall have, among others, the following duties:

(a) To act as intermediary between the Secretary and any producer or handler;

(b) To keep minutes, books, and other records, which shall clearly reflect all of its acts and transactions, and such minutes, books, and other records shall be subject to examination by the Secretary at any time;

(c) To make, subject to approval by the Secretary, scientific and other studies, and assemble data on the producing, handling, shipping, and marketing conditions relative to olives, which are necessary in connection with the performance of its official duties;

(d) To submit to the Secretary such available information with respect to olives as he may request or as the committee may deem desirable and pertinent;

(e) To select, from among its members, a chairman and other officers, and to adopt such rules and regulations for the conduct of its business as it may deem advisable;

(f) To appoint or employ such other persons as it may deem necessary, and to determine the salaries and define the duties of each such person;

(g) To submit to the Secretary, prior to the beginning of each fiscal year and not later than December 15, a budget of the anticipated expenses of the committee and the proposed assessment rate for such fiscal year, together with a report thereon.

(h) To cause the books of the committee to be audited by one or more certified public accountants at least once each fiscal year, and at such other times as the committee may deem necessary or as the Secretary may request. The report of each such audit shall show, among other things, the receipts and expenditures of funds, and at least two copies of each such audit report shall be submitted to the Secretary.

(i) To prepare monthly statements of its financial operations and make such statements, together with the minutes of its meetings, available at the office of the committee for inspection by any producer or handler, and to submit copies of such statements and minutes to the Secretary;

(j) To give reasonable advance notice of each meeting by mail addressed to each member, and such notice shall be given as widespread publicity as practicable. The same notice of meetings given to members shall be given to the Secretary;

(k) With the approval of the Secretary, to redefine the districts into which the area has been divided in

§ 932.21 and to reapportion the membership in accordance therewith: *Provided*, That any such changes reflect insofar as practicable shifts in olive acreage within the districts and area, the numbers of growers in the districts, the tonnage produced, and are equitable as to producers; and

(l) To investigate compliance with the provisions of this part.

[30 FR 12629, Oct. 2, 1965, as amended at 33 FR 11266, Aug. 8, 1968; 47 FR 32907, July 30, 1982]

§ 932.36 Procedure.

Decisions of the committee shall be by majority vote of the members present and voting, and a quorum must be present: *Provided*, That decisions requiring a recommendation to the Secretary on matters pertaining to grade and size regulations shall require at least 10 affirmative votes, at least 5 of which must be from producer members and at least 5 of which must be from handler members and, if the committee is increased by the addition of a public member, at least 11 affirmative votes shall be required, at least 5 of which must be from producer members and at least 5 of which must be from handler members. A quorum shall consist of at least 10 members of whom at least 5 shall be producer members and at least 5 shall be handler members and, if the committee is increased by the addition of a public member, a quorum shall consist of at least 11 members of which at least 5 shall be producer members and at least 5 shall be handler members. Except in case of an emergency, a minimum of 5 days advance notice shall be given with respect to any meeting of the committee. In case of an emergency, to be determined within the discretion of the chairman of the committee, as much advance notice of a meeting as is practicable in the circumstances shall be given. The committee may vote by mail or telegram upon due notice to all members, but any proposition to be so voted upon first shall be explained accurately, fully, and identically by mail or telegram to all members. When voted on by such method, at least 14 affirmative votes, of which seven shall be producer member votes and seven shall be handler member votes, shall be required for adoption and, if the committee is increased by the addition of a public member, votes by mail or telegram shall require at least 15 affirmative votes, of which at least 7 shall be producer member votes and at least 7 shall be handler member votes. The committee may recommend for the Secretary's approval changes in the number of affirmative votes required for adoption of any proposition voted upon by means of a mail or telegram ballot: *Provided*, That the number of affirmative votes required for adoption shall not be less than ten, and in any case an equal number of producer member and handler member votes shall be required for adoption and, if the committee is increased by the addition of a public member, the number of affirmative votes required for adoption shall be increased by one.

[47 FR 32908, July 30, 1982]

§ 932.37 Compensation and expenses.

The members of the committee and alternates when acting as members or at the request of the committee or its chairman shall serve without compensation, but shall be reimbursed for necessary expenses, as approved by the committee, incurred by them in the performance of their duties under this part.

[47 FR 32908, July 30, 1982]

Expenses and Assessments

§ 932.38 Expenses.

The committee is authorized to incur such expenses as the Secretary finds are reasonable and likely to be incurred by the committee for its maintenance and functioning and to enable it to exercise its powers and perform its duties in accordance with the provisions of this part. The funds to cover such expenses shall be acquired in the manner prescribed in § 932.39.

§ 932.39 Assessments.

(a) As each handler's pro rata share of the expenses which the Secretary finds are reasonable and likely to be incurred by the committee during a fiscal year, each handler who first

handles olives during the current crop year shall pay to the committee, upon demand, assessments less any amounts which may be credited pursuant to § 932.45, on all olives to be used in the production of packaged olives, including olives to be used in canned ripe olives of the "tree-ripened" type or green olives when such are regulated as packaged olives pursuant to § 932.52. The payment of assessments for maintenance and functioning of the committee may be required under this part throughout the period it is in effect irrespective of whether particular provisions thereof are suspended or become inoperative.

(b) The Secretary shall fix the rate of assessment to be paid by each such handler during a fiscal year in an amount designed to secure sufficient funds to cover the expenses which may be incurred during such period. At any time during or after the fiscal year, the Secretary may increase the rate of assessment in order to secure sufficient funds to cover any later finding by the Secretary relative to the expenses which may be incurred. Such increase shall be applied to all olives handled during the applicable crop year. In order to provide funds for the administration of the provisions of this part during the first part of a fiscal year before sufficient operation income is available from assessments, the committee may accept the payment of assessments in advance, and may also borrow money for such purpose.

(c) Any assessment not paid by a handler within a period of time prescribed by the committee may be subject to an interest or late payment charge, or both. The period of time, rate of interest and late payment charge shall be as recommended by the committee and approved by the Secretary. Subsequent to such approval, all assessments not paid within the presecribed period of time shall be subject to an interest or late payment charge or both.

[47 FR 32908, July 30, 1982, as amended at 47 FR 51093, Nov. 12, 1982]

§ 932.40 Accounting.

(a) If, at the end of a fiscal year, the assessments collected are in excess of expenses incurred, such excess shall be accounted for in accordance with one of the following:

(1) If such excess is not retained in a reserve as provided in paragraph (a)(2) of this section, the committee shall refund or credit to handler accounts the aforesaid excess. Each handler's share of such excess funds shall be the amount of assessments such handler has paid in excess of such handler's pro rata share of the actual net expenses of the committee for such fiscal year. Excess funds may be used temporarily by the committee to defray expenses of the subsequent fiscal year: *Provided,* That each handler's share of such excess shall be made available to the handler by the committee within five months after the end of the fiscal year.

(2) The committee, with the approval of the Secretary, may carry over such excess into subsequent fiscal years as a reserve: *Provided,* That funds already in the reserve do not exceed approximately one fiscal year's expenses. Such reserve funds may be used for any expenses authorized pursuant to § 932.38 and for necessary expenses of liquidation in the event of termination of this part. Upon such termination, any funds not required to defray the necessary expenses of liquidation shall be disposed of in such manner as the Secretary may determine to be appropriate: *Provided,* That to the extent practicable, such funds shall be returned pro rata to the persons from whom such funds were collected.

(b) All funds received by the committee pursuant to the provisions of this part shall be used solely for the purpose specified in this part and shall be accounted for in the manner provided in this part. The Secretary may at any time require the committee and its members to account for all receipts and disbursements.

(c) Upon the removal or expiration of the term of office of any member of the committee, such member shall account for all receipts and disbursements and deliver all property and funds in his possession to the committee, and shall execute such assignments and other instruments as may be necessary or appropriate to vest in

the committee full title to all of the property, funds, and claims vested in such member pursuant to this part.

[30 FR 12629, Oct. 2, 1965, as amended at 47 FR 32908, July 30, 1982]

Research and Development

§ 932.45 Production research and marketing research and development projects.

(a) The following activities of the committee are authorized under this section.

(1) The committee may, with the approval of the Secretary, establish or provide for the establishment of production research, and marketing research and development projects designed to assist, improve or promote the marketing, distribution, and consumption or efficient production of California olives. Such projects may provide for any marketing research and development projects designed to assist, improve, or promote the marketing, distribution, and consumption or efficient production of California olives. Such projects may provide for any form of marketing promotion including paid advertising. The expenses of such research and projects shall be paid from funds collected pursuant to § 932.39 or from voluntary contributions. Voluntary contributions may be accepted by the committee only to pay the expenses of such projects: *Provided,* That the committee shall retain complete control over the use of such contributions which shall be free from any encumbrances.

(2) The committee, with the approval of the Secretary, may provide for crediting a portion of a handler's direct expenditures for paid brand advertising for olives. Such expenditures may include, but are not limited to, money spent for advertising space in magazines, newspapers, outdoor media and transit or time charges for radio and television. No handler shall receive credit in excess of such handler's pro rata share of the total monies allotted by the committee for brand advertising credit. Each advertisement must be published, broadcast or displayed during the fiscal year for which credit is requested. Before any creditable brand advertising may be undertaken pursuant to this paragraph (a)(2) of this section, the Secretary, upon recommendation by the committee, shall prescribe appropriate rules and regulations as are necessary to effectively regulate such activity.

(b) In recommending marketing research and development projects pursuant to this section, the committee shall give consideration to the following factors:

(1) The expected supply of olives in relation to market requirements;

(2) The supply situation among competing areas and commodities; and

(3) The need for marketing research with respect to any marketing development activity and the need for a coordinated effort with USDA's Plentiful Food Program.

(c) In recommending production research projects pursuant to this section, the committee shall give consideration to the extent and need for assistance to, and improvement of California olive production.

(d) If the committee should conclude that a program of production research, marketing research, or development should be undertaken or continued pursuant to this section in any fiscal year, it shall submit the following for the approval of the Secretary:

(1) Its recommendations as to funds to be obtained pursuant to § 932.39 or voluntary contributions;

(2) Its recommendations as to any production research or marketing research project; and

(3) Its recommendation as to promotion activity and paid advertising.

(e) The committee shall, as soon as practicable, prepare and mail reports on current production research and marketing research and development projects to the Secretary and make a copy of such reports available at the committee office for examination by producers, handlers, or other interested parties.

[36 FR 20356, Oct. 21, 1971, as amended at 47 FR 32908, July 30, 1982; 47 FR 51093, Nov. 12, 1982]

Regulations

§ 932.50 Report of marketing policy.

At least 14 days prior to the start of each crop year (except that this period

may be shortened by the committee not more than 5 days if warranted), the committee shall hold a meeting for the purpose of formulating a marketing policy for the coming crop year: *Provided,* That with respect to the 1982-83 crop year the committee shall hold a meeting for such purpose as soon as practicable. The committee shall prepare and submit to the Secretary promptly after each such meeting, a report setting forth its recommended marketing policy for the ensuing crop year. In the event it becomes advisable to modify such policy, because of changed supply, demand, or other conditions, the committee shall formulate a new policy and shall submit a report thereon to the Secretary. In developing the marketing policy, the committee shall give consideration to the handler carryover, production, probable quality and composition of olive sizes in the crop, trade demand, probable imports, whether producer prices are likely to exceed parity, the probable assessable tonnage and such other factors as may have a bearing on the marketing of olives or the administration of this part. Notice of the committee's marketing policy, and of any modifications thereof, shall be given promptly by reasonable publicity to producers and handlers.

[30 FR 12629, Oct. 2, 1965, as amended at 47 FR 32908, July 30, 1982]

§ 932.51 Incoming regulations.

(a) *Minimum standards for natural condition olives.* (1) Except as otherwise provided in this section, no handler shall process any lot of natural condition olives for use in the production of packaged olives which has not first been:

(i) Weighed on scales sealed by the State of California Department of Weights and Measures, an official certified weight certificate issued thereon, and a copy of such certificate furnished to the Federal or Federal-State Inspection Service and the committee; and

(ii) Size-graded, either by sample or by lot, under the supervision of any such inspection service and classified into separate size designations and a certification issued with respect thereto by such inspection service. Such size designations shall be in accordance with those set forth in the U.S. Standards for Grades of Canned Ripe Olives (7 CFR Part 52) or subsequent amendments thereto, or such sizes as may be recommended by the committee and established by the Secretary: *Provided,* That, for the purpose of this part, the size designations in said standards shall be deemed to include the following additional size designations.

Designation(s)	Approximate count (per pound)	Average count range (per pound)
Subpetite		181 and up.
Petite	160	141–180, inclusive.
Extra Large Sevillano "L"	82	76–88, inclusive.
Extra Large Sevillano "C"	70	65–75, inclusive.

Provided further, That the additional size designations may be renamed and/or modified as recommended by the committee and approved by the Secretary. Such certification shall show, in addition to the quantities by weight of the olives in the lot that are classified as being in each size or size designation the quantity of olives classified as culls by the handler: *Provided,* That when the Secretary, upon the recommendation of the committee, issues a definition of and classification for "culls", the aforesaid quantity of culls shall be determined on the basis of such definition and in accordance with such classification.

(2) Each handler may satisfy the incoming and outgoing size requirements for any lot of olives under the conditions set forth in subdivisions (i), (ii), and (iii) of this paragraph: *Provided,* That any such lot shall be kept intact under surveillance by the inspection services:

(i) When the Secretary authorizes use of limited size olives for limited use styles during any crop year, any lot of limited use size olives may be used in the production of packaged olives for limited use styles without an outgoing inspection if such olives are within the following average count

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range for that variety group, and meet such further size requirements as recommended by the committee with the approval of the Secretary:

Variety	Average count range (per pound)
Group 1, except Ascolano, Barouni, and St. Agostino.	76–88, inclusive.
Group 1, Ascolano, Barouni and St. Agostino.	89–140, inclusive.
Group 2, except Obliza	141–180, inclusive.
Group 2, Obliza	128–140, inclusive.

Provided, That the varietal groupings and/or average count ranges may be changed, and additional size certification procedures and requirements may be established as recommended by the committee and approved by the Secretary;

(ii) When limited use size olives are not authorized for limited use styles during any crop year, any lot of the minimum canning size olives may be used in the production of packaged olives for limited use styles without an outgoing inspection for size if such olives are within the following average count range for that variety group, and meet such further size requirements as recommended by the committee with approval of the Secretary:

Variety	Average count range (per pound)
Group 1, except Ascolano, Barouni, and St. Agostino.	65–75, inclusive.
Group 1, Ascolano, Barouni and St. Agostino.	65–88, inclusive.
Group 2, except Obliza	128–140, inclusive.
Group 2, Obliza	106–121, inclusive.

Provided, That for whole and whole pitted styles of olives an additional size grading is required after processing, prior to canning, and those olives that fail to meet the requirements in § 932.52 may be used in limited use styles. *Provided further,* That the varietal groupings, average count ranges, and/or other size requirements may be changed or modified as recommended by the committee and approved by the Secretary;

(iii) The committee may recommend, subject to approval by the Secretary, size certification procedures for olives used in the production of canned whole or pitted styles of olives: *Provided,* That if size certification for canned whole or pitted styles is implemented, marketing order sizes shall be adopted and size requirements in the U.S. Grade Standards shall not apply. Size certification of such styles shall be applicable to any or all sizes of olives recommended by the committee and approved by the Secretary pursuant to § 932.52(a)(2). Size certification procedures recommended to the Secretary may include but are not limited to the establishment of average count ranges, acceptable count ranges, and approximate counts (midpoints) for each variety or variety group.

(3) Each handler shall, under the supervision of any such inspection service, dispose of into noncanning use an aggregate quantity of olives, comparable in size and characteristics and equal to the quantities shown on the certification for each lot to be:

(i) Variety Group 1 olives, except the Ascolano, Barouni, and St. Agostino varieties, of a size which individually weigh less than $\frac{1}{80}$ pound;

(ii) Variety Group 1 olives of the Ascolano, Barouni, and St. Agostino varieties of a size which individually weigh less than $\frac{1}{140}$ pound;

(iii) Variety Group 2 olives, except the Obliza variety, of a size which individually weigh less than $\frac{1}{180}$ pound;

(iv) Variety Group 2 olives of the Obliza variety of a size which individually weigh less than $\frac{1}{140}$ pound;

(v) Such other sizes for the foregoing variety groups as are not authorized for limited use pursuant to § 932.52; and

(vi) Olives classified as culls.

(4) Notwithstanding the provisions of paragraph (a)(3) of this section, a handler may (i) meet any deficit in such handler's undersize obligation in one variety by disposing of, under supervision of the inspection service, as other than canned ripe olives, an equal quantity of undersize olives, of any other variety, or by so disposing of an equal quantity of olives of that or any other variety of sizes larger than undersize of a quality better than culls, and (ii) meet any deficit in such handler's cull obligation in one variety by

so disposing of an equal quantity of cull olives of any other variety, or by so disposing of an equal quantity of olives of any variety of sizes larger than undersize of a quality better than culls.

(5) Each handler shall hold at all times a quantity of olives equal to the quantities required in paragraph (a)(3) of this section, less any quantity previously disposed of as specified in such subparagraph.

(b) Whenever a handler receives a lot of natural condition olives, or makes a separation resulting in a sublot, solely for use in the production of green olives or canned ripe olives of the "tree-ripened" type, he may handle such lot or sublot without regard to the provisions of this section and § 932.52 only if (1) he notifies the committee upon receiving such a lot or making such a separation; (2) the identity of all such lots and sublots of olives is maintained by keeping them separate and apart from other olives he receives; (3) the packaged olives produced from such lots and sublots after processing are canned ripe olives of the "tree-ripened" type or green olives; and (4) there are no outgoing regulations pursuant to § 932.52 then applicable to packaged olives that are canned ripe olives of the "tree-ripened" type or green olives.

[30 FR 12629, Oct. 2, 1965, as amended at 33 FR 11267, Aug. 8, 1968; 36 FR 20356, Oct. 21, 1971; 47 FR 32909, July 30, 1982]

§ 932.52 Outgoing regulations.

(a) *Minimum standards for packaged olives.* No handler shall use processed olives in the production of packaged olives or ship such packaged olives unless they have first been inspected as required pursuant to § 932.53 and meet each of the following applicable requirements:

(1) Canned ripe olives, other than those of the "tree-ripened" type, shall grade at least U.S. Grade C as such grade is defined in the U.S. Standards for Grades of Canned Ripe Olives (7 CFR Part 52) or subsequent amendments thereto, or as modified by the committee, with approval of the Secretary, for purposes of this part.

(2) Except as provided in § 932.51(a)(1) and (2), canned whole ripe olives, other than those of the "tree-ripened" type, shall conform to the single size designations set forth in the U.S. Standards for Grades of Canned Ripe Olives (7 CFR Part 52) or subsequent amendments thereto, or as modified by the committee, with the approval of the Secretary, and shall be of a size not smaller than the following applicable size requirements, tolerances and percentages: *Provided,* That the Secretary, on the basis of a recommendation of the committee or other available information, may change such sizes, tolerances or percentages:

(i) With respect to variety group 1 olives, except the Ascolano, Barouni, and St. Agostino varieties, the individual fruits shall each weigh no less than $\frac{1}{15}$ pound, except that (A) for olives of the extra large size designation, not more than 25 percent, by count, of such olives may weigh less than $\frac{1}{15}$ pound each including not more than 10 percent, by count, of such olives that weigh less than $\frac{1}{32}$ pound each; and (B) for olives of any designation except the extra large size, not more than 5 percent, by count, of such olives may weigh less than $\frac{1}{15}$ pound each;

(ii) With respect to variety group 1 olives of the Ascolano, Barouni and St. Agostino varieties, the individual fruits shall each weigh not less than $\frac{1}{38}$ pound except that (A) for olives of the extra large size designation, not more than 25 percent, by count, of such olives may weigh less than $\frac{1}{38}$ pound each including not more than 10 percent, by count, of such olives that weigh less than $\frac{1}{38}$ pound each, and (B) for olives of any size designation, except the extra large size, not more than 5 percent, by count, of such olives may weigh less than $\frac{1}{38}$ pound each;

(iii) With respect to variety group 2 olives, except the Obliza variety, the individual fruits shall each weigh not less than $\frac{1}{140}$ pound except that (A) for olives of the small size designation, not more than 35 percent, by count, of such olives may weigh less than $\frac{1}{140}$ pound each including not more than 7 percent, by count, of such olives that weigh less than $\frac{1}{150}$ pound each; and (B) for olives of any size designation, except the small size, not more than 5

percent, by count, of such olives may weigh less than 1/140 pound each; and

(iv) With respect to Variety Group 2 olives of the Obliza variety, the individual fruits shall each weigh not less than 1/121 pound except that (a) for olives of the medium size designation, not more than 35 percent, by count, of such olives may weigh less than 1/121 pound each including not more than 7 percent, by count, of such olives that weigh less than 1/135 pound each; and (b) for olives of any size designation, except the medium size, not more than 5 percent, by count, of such olives may weigh less than 1/121 pound each.

(3) Subject to the provisions set forth in paragraph (a)(4) of this section and § 932.51(a) (1) and (2), processed olives to be used in the production of canned pitted ripe olives, other than those of the "tree-ripened" type, shall meet the same requirements as prescribed pursuant to paragraph (a)(2) of this section: *Provided*, That olives smaller than those so prescribed, as recommended annually by the committee and approved by the Secretary, may be authorized for limited use but any such limited use size olives so used shall be not smaller than the following applicable minimum size: *Provided further*, That each such minimum size may also include a size tolerance (specified as a percent) as recommended by the committee and approved by the Secretary.

(i) Variety Group 1 olives, except the Ascolano, Barouni, and St. Agostino varieties, of a size which individually weigh 1/90 pound;

(ii) Variety Group 1 olives of the Ascolano, Barouni, or St. Agostino varieties, of a size which individually weigh 1/140 pound;

(iii) Variety Group 2 olives, except the Obliza variety, of a size which individually weigh 1/180 pound;

(iv) Variety Group 2 olives of the Obliza variety, of a size which individually weigh 1/140 pound.

(4) The Secretary may, upon recommendation of the committee, restrict the total quantity of limited use size olives for limited use during any crop year. Such restricted quantity shall be apportioned among the handlers by applying a percentage, established annually by the Secretary upon recommendation by the committee, to each handler's total receipts of limited use size olives during such crop year.

(5) Canned ripe olives of the "tree-ripened" type and green olives shall meet such grade, size, and pack requirements as may be established by the Secretary based upon the recommendation of the committee or other available information.

(6) The size designations used in this section mean the size designations described in (a)(1)(ii) of § 932.51.

(7) For the purposes of this part the committee may, with the approval of the Secretary, specify the styles of olives, including the requirements with respect thereto, for limited use.

(b) *Disposition requirements for limited use size olives.* (1) The requirements of this paragraph are in addition to and not in substitution of the requirements of § 932.51(a)(5).

(2) Each handler shall, under the supervision of the Processed Products Branch, USDA, or the Federal or Federal-State Inspection Service, dispose of limited use size olives into limited use or into noncanning use: *Provided*, That whenever a handler's use of limited use size olives is restricted pursuant to § 932.52(a)(4), such handler shall dispose of into noncanning use that quantity of such limited use size olives which is in excess of the quantity permitted for limited use.

(3) Notwithstanding the provisions of paragraph (b)(2) of this section, a handler may meet any deficit in his obligation to dispose of limited use size olives into noncanning use pursuant to this paragraph by disposing of, under supervision of the inspection service, an equivalent quantity of olives of a size larger than the limited use size and of a quality better than culls.

(4) Each handler shall hold at all times a quantity of olives eligible to meet the disposition requirements of this paragraph less any quantity previously disposed of as specified in paragraphs (b) (2) and (3) of this section.

[36 FR 20357, Oct. 21, 1971, as amended at 47 FR 32910, July 30, 1982]

§ 932.53 Inspection and certification.

(a) Each handler shall have the olives such handler handles inspected and certified as for conformance with all applicable requirements pursuant to §§ 932.51 and 932.52 with respect to such handling. Inspection and certification for conformance with the requirements of § 932.51 shall be by the Federal or Federal-State Inspection Service, including certification as to size, and inspection for conformance with the requirements of § 932.52 shall be by the Processed Products Branch, USDA, except that the disposition of olives, other than as canned ripe olives, in accordance with the requirements of § 932.51(a)(3) may be under the supervision of any of such inspection services. A copy of each certification by the said inspection services, pursuant to the provisions of this section, shall be furnished to the committee.

(b) The committee may enter into an agreement with either or both of said inspection services with respect to the costs of the inspection required by this section and may collect from handlers their respective pro rata share of such costs.

[30 FR 12629, Oct. 2, 1965, as amended at 47 FR 32910, July 30, 1982]

§ 932.54 Transfers.

Transfers within the area of olives from one handler to another for further handling within the area are permitted. Whenever such a transfer of olives is made, the transferring handler shall comply with all applicable regulations up to the time of such transfer, and the receiving handler shall comply with all applicable regulations subsequent to such transfer: *Provided*, That the disposition obligations referable to transferred natural condition olives pursuant to § 932.51(a)(3) may be transferred along with the olives, in which event the receiving handler shall comply with the disposition obligations. Transfers of olives from within the area to any point outside the area shall be subject to such requirements with respect to inspection, holding, disposition, and reporting as may be established by the Secretary on the basis of recommendations by the committee or other available information.

[33 FR 11267, Aug. 8, 1968, as amended at 36 FR 20357, Oct. 21, 1971; 47 FR 32910, July 30, 1982]

§ 932.55 Exemption.

(a) The provisions of this subpart shall not be applicable to processed olives on hand on the effective date of this subpart but only if the identity of such olives is maintained and such olives are not commingled with olives processed after such effective date in the production of packaged olives. However, olives on hand on such effective date that are commingled with olives processed after such date and are used in the production of packaged olives shall be subject to all relevant provisions applicable to the handling of packaged olives.

(b) Upon the basis of the recommendation submitted by the committee or from other available information, the Secretary may relieve from any or all requirements under this part the handling of olives in such minimum quantities, in such types of shipments, or for such specified purposes (including shipments to facilitate the conduct of marketing research and development projects established pursuant to § 932.45) as the committee with the approval of the Secretary may prescribe.

(c) The committee, with the approval of the Secretary, shall prescribe rules, regulations, and safeguards as it may deem necessary to ensure that olives exempted under the provisions of this section are handled only as authorized.

[30 FR 12629, Oct. 2, 1965, as amended at 33 FR 11267, Aug. 8, 1968]

Reports and Records

§ 932.60 Reports of acquisitions, sales, uses, shipments and creditable brand advertising.

(a) Each handler shall file such reports of his acquisitions, sales, uses, and shipments of olives, as may be requested by the committee.

(b) Upon the request of the committee, each handler shall furnish such other reports and information as are

needed to enable the committee to perform its functions under this part.

(c) Each handler shall file such reports of creditable brand advertising as recommended by the committee and approved by the Secretary.

[30 FR 12629, Oct. 2, 1965, as amended at 47 FR 51094, Nov. 12, 1982]

§ 932.61 Records.

Each handler shall maintain such records of olives acquired, held, and disposed of by such handler as may be prescribed by the committee and needed by it to perform its functions under this subpart. Such records shall be retained for at least two years beyond the crop year in which the transaction occurred. The committee, with the approval of the Secretary, may prescribe rules and regulations to include under this section handler records that detail advertising and promotion activities which the committee may need to perform its functions under § 932.45(a).

[47 FR 51094, Nov. 12, 1982]

§ 932.62 Verification of reports.

For the purpose of checking and verifying reports filed by handlers, the committee, through its duly authorized representatives, shall have access to any handler's premises during regular business hours, and shall be permitted at any such time to: (a) Inspect such premises and any olives held by such handler, and any and all records of the handler with respect to such handler's acquisition, sales, uses and shipments of olives; and (b) inspect any and all records of such handler with respect to advertising and promotion activities subject to § 932.45(a) and maintained by the handler pursuant to § 932.61. Each handler shall furnish all labor and equipment necessary to make such inspections.

[47 FR 51094, Nov. 12, 1982]

§ 932.63 Confidential information.

All reports and information submitted by handlers pursuant to the provisions of this part shall be received by, and at all times be in the custody of one or more designated employees of the committee. No such employees shall disclose to any person, other than the Secretary upon request therefor, data, or information obtained or extracted from such reports and records which might affect the trade position, financial condition, or business operation of the particular handler from whom received: *Provided,* That such data and information may be combined, and made available in the form of general reports in which the identities of the individual handlers furnishing the information is not disclosed.

Miscellaneous Provisions

§ 932.65 Compliance.

Except as provided in this part, no person shall handle olives, the handling of which has been prohibited by the Secretary in accordance with the provisions of this part, and no person shall handle olives except in conformity with the provisions of this part and the regulations issued hereunder.

§ 932.66 Right of the Secretary.

The members of the committee (including successors and alternates) and any agents or employees appointed or employed by the committee, shall be subject to removal or suspension at any time by the Secretary. Each and every order, regulation, determination, decision, or other act of the committee shall be subject to the continuing right of the Secretary to disapprove of the same at any time. Upon such disapproval, such disapproved action shall be deemed null and void except as to acts done in reliance thereon or in compliance therewith prior to such disapproval by the Secretary.

§ 932.67 Effective time.

The provisions of this subpart, as well as any amendments to this subpart, shall become effective at such time as the Secretary may declare, above his signature, and shall continue in force until terminated in one of the ways specified in § 932.68.

§ 932.68 Termination.

(a) The Secretary may, at any time, terminate the provisions of this subpart by giving at least one day's notice by means of a press release or in any

other manner which he may determine.

(b) The Secretary shall terminate or suspend the operation of any or all of the provisions of this subpart whenever he finds such provisions do not tend to effectuate the declared policy of the act.

(c) The Secretary shall terminate the provisions of this subpart at the end of any crop year whenever the Secretary finds that such termination is favored by a majority of producers who, during a representative period determined by the Secretary, have been engaged in the area in the production of olives for market as packaged olives: *Provided,* That such majority have during such representative period produced for market more than 50 percent of the volume of such olives produced for market, but such termination shall be effective only if announced on or before July 15 of the then current crop year.

[30 FR 12629, Oct. 2, 1965, as amended at 47 FR 32910, July 30, 1982]

§ 932.69 Proceedings after termination.

(a) Upon the termination of the provisions of this subpart, the members of the committee then functioning shall continue as joint trustees, for the purpose of liquidating the affairs of the committee, of all funds and property then in the possession or under the control of the committee including claims for any funds unpaid or property not delivered at the time of such termination. Action by such trustee shall require the concurrence of a majority of the trustees.

(b) Said trustees shall continue in such capacity until discharged by the Secretary; shall, from time to time, account for all receipts and disbursements, and deliver all property on hand, together with all books and records of the committee and the joint trustees, to such person as the Secretary may direct; and shall, upon the request of the Secretary, execute such assignments or other instruments necessary or appropriate to vest in such person full title and right to all of the funds, property, and claims vested in the committee or the joint trustees.

(c) Any person to whom funds, property, or claims have been transferred or delivered by the committee or the joint trustees, pursuant to this section, shall be subject to the same obligations imposed upon the members of the said committee and upon said joint trustees.

§ 932.70 Effect of termination or amendment.

Unless otherwise expressly provided by the Secretary, the termination of this subpart or any regulation issued pursuant thereto, or the issuance of any amendment to either thereof, shall not (a) affect or waive any right, duty, obligation, or liability which shall have arisen, or which may thereafter arise, in connection with any provision of this subpart, or any regulation issued thereunder; (b) release or extinguish any violation of this subpart or of any regulation issued thereunder; or (c) affect or impair any rights or remedies of the Secretary or any other person with respect to any such violation.

§ 932.71 Duration of immunities.

The benefits, privileges, and immunities conferred upon any person by virtue of this subpart shall cease upon the termination of this subpart, except with respect to acts done under and during the existence of this subpart.

§ 932.72 Agents.

The Secretary may, by a designation in writing, name any person, including any officer or employee of the U.S. Government or name any service or division in the U.S. Department of Agriculture, to act as his agent or representative in connection with any of the provisions of this subpart.

§ 932.73 Derogation.

Nothing contained in this subpart is or shall be construed to be, in derogation or in modification of the rights of the Secretary or of the United States to exercise any powers granted by the act or otherwise, or, in accordance with such powers, to act in the premises whenever such action is deemed advisable.

§ 932.74 Personal liability.

No member or alternate member of the committee or any employee or agent thereof shall be held personally responsible, either individually or jointly with others, in any way whatsoever to any person, for errors in judgment, mistakes, or other acts either of commission or omission, as such member, alternate member, employee, or agent, except for acts of dishonesty.

§ 932.75 Separability.

If any provision of this subpart is declared invalid or the applicability thereof to any person, circumstance, or thing is held invalid, the validity of the remainder of this subpart or the applicability thereof to any other person, circumstance, or thing shall not be affected thereby.

Subpart—Rules and Regulations

§ 932.108 Noncanning olives.

"Noncanning olives" means those olives which, pursuant to the requirements of § 932.51(a)(2), are to be disposed of as other than canned ripe olives.

[31 FR 12634, Sept. 27, 1966]

§ 932.109 Canned ripe olives of the tree-ripened type.

(a) "Canned ripe olives of the tree-ripened type" means packaged olives, not oxidized in processing, that are prepared from a lot or sublot of natural condition olives of advanced maturity which:

(1) Range in color from pinkish red, with some greenish cast, to black; and

(2) Have not more than 10 percent, by count, of "off-color" olives ("off-color" means those olives whose greenish cast covers more than 50 percent of the surface of the individual olives).

[40 FR 38146, Aug. 27, 1975]

§ 932.129 Nomination procedures for producer members.

Members and alternate members on the Committee who represent producers shall be nominated in accordance with the procedures specified in either paragraph (a) or paragraph (b) of this section as the Committee may determine.

(a) *Mail ballot voting.* (1) The Committee shall schedule a meeting, prior to March 1 of each odd-numbered year, in each producing district for the purpose of selecting candidates for member and alternate member nominations. A notice of such meetings will be mailed to each producer of record in each district. The nomination process is as follows:

(i) Any person who produces olives in a particular district may offer the name of any producer from that district as a candidate for either a member or alternate member position in said district.

(ii) A producer, who produces olives in more than one district, can be selected as a candidate for a member or alternate member position in only one district.

(iii) The Committee will notify by mail producers who are selected as candidates but are not in attendance at such meetings. Such producers have the right to decline such listing on the ballot within 7 days of mailing such notice.

(iv) In the event that no candidates or an insufficient number of candidates are selected at such meetings for the producer members and alternates in the respective districts, the Committee will give written notice to producers in said district that additional names may be submitted for the specified position(s).

(2) Following such meetings, and no later than March 15 of each odd-numbered year, the Committee shall prepare and mail a ballot to each producer that delivered olives during that crop year in each district.

(i) A producer who produces olives in more than one district must choose the district in which the producer will vote and notify the Committee of that choice. If the Committee is not notified and more than one ballot is received from such a producer, the first ballot received will be counted. Candidates may only vote in the district in which they are seeking nomination.

(ii) Each ballot will list separately the names of candidates for the member positions and the names of

candidates for the alternate member positions for said district.

(iii) A ballot will be mailed to producers of record to give them an opportunity to vote. Committee records will be used to determine the list of producers eligible to cast ballots. However, any producer who is not identified in such records may receive a ballot if the Committee determines that such producer is eligible to participate in nominations in that district.

(iv) A producer may cast a vote for as many candidates as there are member or alternate positions in said district.

(v) The candidate on each list, as prescribed in paragraph (a)(2)(ii) of this section, who receives the most votes will be the nominee for the first position, and until all positions for that district are filled, the candidates receiving the second, third and fourth highest number of votes will be the nominees for the second, third and fourth position respectively.

(vi) In the event of a tie which would result in elimination of a tied candidate, a second ballot with the names of those tied candidates will be mailed to producers in said district for another vote.

(b) *Nomination meetings.* In lieu of the mail ballot nomination procedure specified in paragraph (a) of this section, the Committee may schedule nomination meetings. In such an event, the following procedure will apply:

(1) Prior to March 15 of each odd-numbered year, the Committee shall schedule a nomination meeting to be held in each district for the purpose of obtaining nominees for producer members and alternate members for such district.

(2) Nominations for members and balloting thereon shall precede nominations and balloting for alternate members.

(3) The candidate for each position who receives the highest number of votes shall be the nominee for the position: *Provided,* That such candidate receives a majority of the ballots cast. If no candidate receives such a majority, the two candidates who received the highest number of votes shall participate in a run-off balloting to determine which is the nominee.

(c) For the purposes of this section, a producer is a person engaged in a proprietary capacity as a single business unit in the production of olives for market as packaged olives and includes an individual (owner-operated), partnership, corporation, association, institution, or other legal business unit.

(d) *Determination of producer eligibility.* (1) Only producers (including duly authorized officers or employees of producers) who produced olives within the district shall participate in the nomination and election of producer members and alternates.

(2) Each producer (as defined in paragraph (c) of this section) shall be entitled to cast only one vote for each position.

(3) A producer having olive acreage in more than one district may participate in nominations and elections in only one district. The district in which the producer wishes to participate shall be the producer's choice.

(4) Any member of a producer's family (husband, wife, son or daughter) may vote on behalf of an owner-operated, landlord-tenant, family enterprise, or other farming unit.

(5) Any authorized officer or employee of a corporation which is a producer may vote.

(6) Any authorized member of a partnership which is a producer may vote.

(7) Power of attorney (proxies) for voting purposes are not accepted.

[48 FR 24312, June 1, 1983]

§ 932.130 Public member and alternate public member eligibility requirements and nomination procedures.

(a) *Eligibility requirements.* (1) The public member and alternate public member shall not be a producer, handler, or family member (husband, wife, son or daughter) of a producer or handler of olives and shall have no direct financial interest in, nor be engaged in, the commercial production, marketing, buying, grading or processing of olives; nor shall they be either an officer, director, or employee, or family member of an officer, director,

or employee of any firm engaged in such activities.

(2) The public member and alternate public member should be able to devote sufficient time and must express a willingness to attend subcommittee and committee activities regularly and to familiarize themselves with the background and economics of the olive industry.

(3) The public member and alternate public member must be residents of California.

(b) *Nomination procedures.* (1) Prior to April 16 of the year in which nominations are made, the Committee will recommend to the Secretary a public member and alternate public member for the Committee for a two-year term of office beginning June 1 and ending May 31 of odd numbered years.

(2) The Committee will solicit, interview and recommend to the Secretary its nominees for public member and alternate public member.

(3) A majority vote is required in Committee actions concerning the nomination of the public member and alternate public member.

[48 FR 24313, June 1, 1983]

§ 932.139 Late payment and interest charges.

(a) The committee shall impose a late payment charge on any handler whose assessment has not been received in the committee's office, or the envelope containing the payment legibly postmarked by the U.S. Postal Service, within 30 days of the invoice date shown on the handler's assessment statement. The late payment charge shall be five percent of the unpaid balance.

(b) In addition to that specified in paragraph (a) of this section, the committee shall impose an interest charge on any handler whose assessment payment has not been received in the committee's office, or the envelope containing the payment legibly postmarked by the U.S. Postal Service, within 30 days of the invoice date. The interest charge shall be the current commerical prime rate of the committee's bank plus two percent which shall be applied to the unpaid balance and late payment charge for the number of days all or any part of the assessment specified in the handler's assessment statement is delinquent beyond the 30 day payment period.

(c) The committee, upon receipt of a late payment equal to or greater than the assessment specified on the handler's assessment statement, shall promptly notify the handler (by registered mail) of any late payment charge and/or interest due as provided in paragraphs (a) and (b) of this section. If such charges are not paid, or the envelope containing payment is not legibly postmarked by the U.S. Postal Service, within 30 days of the date on such notification, late payment and interest charges as provided in paragraphs (a) and (b) of this section will accrue on the unpaid amount.

[49 FR 29210, July 19, 1984]

§ 932.145 Marketing promotion, including paid advertising and crediting for handler paid brand advertising.

(a) In order for a handler to receive credit for paid brand advertising expenditures against the handler's pro rata expense assessment obligations pursuant to § 932.45, the Committee shall determine that such expenditures meet the applicable requirements of this section.

(1) Creditable direct expenditures shall mean the actual money spent for advertising space in magazines, newspapers, outdoor media, transit, or other similar print media not otherwise prohibited in this section, or time charges for radio, television and other similar electronic media: *Provided,* That the amount of the creditable expenditures shall be the gross media cost as listed on the invoice, less any frequency or cash discounts earned.

(2) For an advertisement resulting from joint participation by a handler and one or more manufacturers or sellers of complementary commodities or products, and including the brands of all participants, the handler's credit shall be the amount computed according to the handler's proportional share of the total allowable payment to the advertising medium, or the handler's payment thereof, whichever is less.

(3) Production costs, preparation expense, travel allowances, costs relating to pre-testing of advertising, test mar-

keting, directory advertising, point of sale material, premiums, trade promotional allowances, coupon redemption fees, or other expenses not directly connected with paid space or time costs, shall not be eligible for such assessment crediting.

(4) "Brand" is defined as those brands which are controlled, owned and registered by regulated olive handlers, or their parent or subsidiary companies.

(5) To be creditable, each advertisement must include a visual or verbal reference, acceptable to the Committee, with respect to the California origin of the olives advertised.

(b) Pursuant to § 932.39, assessments shall be paid by each handler in each fiscal year to cover the Committee's expenses as approved by the Secretary pursuant to § 932.38.

(1) Such assessment funds shall first be made available to cover the Committee's administrative expenses, and if applicable, expenses for research and crop estimates.

(2) Any remaining assessment funds over the amount budgeted pursuant to paragraph (b)(1) up to an additional $8 per ton, shall be used for the Committee's generic advertising and marketing promotion projects.

(3) Any remaining assessment funds over the amounts budgeted pursuant to paragraphs (b) (1) and (2), up to an additional $8 per ton, shall be made available for crediting a handler's direct expenditures for paid brand advertising; and

(4) Any remaining assessment funds over the amounts budgeted pursuant to paragraphs (b) (1), (2) and (3) shall be allocated equally for:

(i) The Committee's generic advertising and marketing promotion projects; and

(ii) Crediting a handler's direct expenditures for paid brand advertising.

(c) Each advertisement must be published, broadcast, or displayed during the fiscal year in which credit is requested, except:

(1) The initial period shall begin on September 1, 1982, and end on December 31, 1983; and

(2) That a maximum of 34 percent of a handler's total assessment obligation available for crediting advertising expenditures as of December 31 of each fiscal year, may be included as an assessment obligation in the succeeding fiscal year, but must be so credited no later than June 30 of such succeeding fiscal year with documentation to be filed with the Committee no later than the following August 31. Any such remaining assessment funds not credited are due to the Committee no later than the following September 15.

(d) Except as provided in paragraph (c), assessments available to a handler for crediting but not so credited by December 1 shall become due and payable by December 1, except that the creditable brand advertising scheduled after December 1 may be deducted from the assessment due provided a purchase order, insertion order or other document showing that intention to advertise is submitted by December 1. The submission of intentions to advertise will not relieve a handler from the obligation of submitting proof of performance for the expenditure.

(e) Handlers who meet the applicable requirements specified in this section shall be credited with 100 percent of such allowable expenditures, but the total amount credited shall not exceed their individual prorate share of the total amount assessable for brand credit for that fiscal year.

(f) Except as provided in paragraph (c) of this section, any funds available for the assessment credit for handler paid brand advertising but not so credited, shall be paid to the Committee as provided in § 932.39, and such funds shall be placed in the Committee's reserves pursuant to § 932.40(a)(2).

(g) A handler must file a claim with the Committee to obtain credit for advertising expenditure. Each claim must be submitted in writing and accompanied by appropriate proof of performance as follows:

(1) For published advertisements, a copy of the publication invoice, agency invoice, if any, and tear sheet of the advertisement;

(2) For radio advertisements, a copy of the station invoice, a copy of the script, or reference to a copy on file with the Committee, and the agency invoice, if any;

(3) For television advertisements, a copy of the station invoice, script, and tape or story board of the advertisement, or a reference to these in the Committee files, and the agency invoice, if any;

(4) For outdoor advertisements, a copy of the company invoice, a photograph of the display or a reference to a photograph in the Committee files, and the agency invoice, if any;

(5) Or such other proof of performance and invoice as may be approved by the Committee.

[48 FR 24313, June 1, 1983, as amended at 49 FR 1, Jan. 3, 1984]

§ 932.149 Modified minimum grade requirements for specified styles of canned olives of the ripe type.

(a) Except as otherwise provided in this section, the minimum grade requirements prescribed in § 932.52(a)(1) are modified as follows, for specified styles of canned olives of the ripe type:

(1) Canned whole, pitted, and broken pitted olives of the ripe type shall grade at least U.S. Grade C: *Provided,* That such olives shall meet the requirements of U.S. Grade B with respect to character;

(2) Canned chopped olives of the ripe type shall grade at least U.S. Grade C and shall be practically free from identifiable units of pit caps, end slices, and slices ("practically free from identifiable units" means that not more than 5 percent, by weight, of the unit of chopped style olives may be identifiable pit caps, end slices, or slices); and

(3) Canned halved, segmented (wedged) and sliced olives of the ripe type shall grade at least U.S. Grade C;

(b) Terms used in this section shall have the same meaning as are given to the respective terms in the current U.S. Standards for Grades of Canned Ripe Olives (7 CFR Part 52) including the terms "U.S. Grade B", "U.S. Grade C", "size", "character", "defects", and "Ripe Type": *Provided,* That Table I of this section shall apply in lieu of the tables for limits for defects contained in said standards.

TABLE I—LIMITS FOR DEFECTS

	Whole per 50 olives	Pitted per 50 olives	Halves per 100 halves	Segmented per 255 gm (9oz)	Sliced per 255 gm (9oz)	Chopped per 255 gm (9oz)	Broken pitted per 255 gm (9oz)
HEVM, HEM or EVM	1	1	1	2	Fairly free	Fairly free	2.
Stems:							
Minor and major stems inclusive.	3	3	3				
Major stems	2	2	2	3	3	3	4.
Minor and major blemishes, minor and major wrinkles and mutilated.	10	10	No limit	Fairly free	Fairly free	Fairly free	No limit.
Provided: Major blemishes, major wrinkles do not exceed.	5	5	25				51 gm. [1]
Further provided: Mutilated do not exceed.	3	3					
Broken pieces and poorly cut units.			25	Fairly free	Fairly free		
Mechanical damage	5	5	20				
Blowouts, cross pitted, plunger and pitter damage.		15					
Obvious split pit or misshapen.	5						
Severe blemishes (green-ripe type only).	3	3	3				

[1] Major blemishes only.

[47 FR 51349, Nov. 15, 1982, as amended at 49 FR 34440, Aug. 31, 1984; 49 FR 44448, Nov. 7, 1984]

§ 932.150 Modified grade requirements for canned green ripe olives.

The grade requirements prescribed in § 932.52(a)(1) of this part are hereby modified with respect to canned green ripe olives so that no requirements shall be applicable with respect to color and blemishes of such olives.

[48 FR 54212, Dec. 1, 1983]

§ 932.151 Incoming regulations.

(a) *Inspection stations.* Natural condition olives shall be sampled and size-graded only at inspection stations which shall be a plant of a handler or other place having facilities for sampling and size-grading such olives: *Provided,* That such location and facilities are satisfactory to the Inspection Service and the committee: *Provided further,* That upon prior application to, and approval by, the committee, a handler may have olives size-graded at an inspection station other than the one where the lot was sampled.

(b) *Lot identification.* Immediately upon receipt of each lot of natural condition olives for which inspection is required, the handler shall complete Form COC 3A or 3C, weight and grade report or such other lot identification form as may be approved by the committee, which shall contain at least the following: (1) Lot number; (2) date; (3) variety; and (4) number and type containers. Pending completion of size-grading of such lot, or the sampling of such lot if it is to be size-graded by sample, the handler shall maintain identity of such lot of olives with its corresponding lot weight and grade report.

(c) *Weighing.* Each lot of natural condition olives for which inspection is required shall be separately weighed to determine the net weight of olives. If the lot is to be size-graded by sample, the lot shall be weighed upon receipt by the hanlder. If the lot is to be size-graded by lot, the net weight shall be determined after size-grading by weighing all of the component parts resulting from the size-grading operations (including culls), and totaling such weights.

(d) *Incoming inspection*—(1) *General.* The handler is responsible for the proper performance of all actions connected with the identification of lots of olives, the weighing of boxes or bins, the taking of samples, the size-grading of samples, and the furnishing of necessary personnel for the carrying out of such actions. All such actions shall be performed under the supervision of the Inspection Service.

(2) *Certification.* For each lot of olives that are size-graded, the handler shall complete Form COC-3A or 3C weight and grade report, which shall contain at least the following: (i) Name of handler; (ii) name of producer; (iii) county of production; (iv) applicable lot number; (v) weight certificate number; (vi) net weight; (vii) number and type of containers; (viii) date received; (ix) time received; (x) method of size-grade determination (sample or lot); (xi) weight of sample, if size-graded by sample; and (xii) the quantity of olives in each size designation. The completed Form COC-3A or 3C shall be furnished to the Inspection Service which shall certify thereon that the lot was size-graded as required by § 932.51 if in accordance with the facts.

(e) *Disposition of noncanning olives*—(1) *Notification and inspection of noncanning olives.* Prior to disposition of noncanning olives the handler shall complete Form COC-5, report of limited and undersize and cull olives inspection and disposition, which shall contain the following: (i) Type and number of containers; (ii) type of olives (undersize or culls); (iii) net weight; (iv) variety; (v) outlet (green olives, olive oil, etc.); and (vi) consignee. Before disposition of such olives, the completed Form COC-5 shall be furnished to the Inspection Service which shall inspect the olives for conformance with the information contained thereon, and, if correct, so certify in the space provided thereon.

(2) *Control and surveillance.* Noncanning olives that have been reported on Form COC-5 and inspected by the Inspection Service shall, unless such olives are disposed of immediately after being inspected under supervi-

sion of the inspector, be identified by fixing to each bin or pallet of boxes an COC control card which may be obtained from the committee. Such olives shall be kept separate and apart from other olives in the handler's possession and shall be disposed of only in the outlet shown on Form COC-5 and under the supervision of an inspector of the Inspection Service.

(3) *Time period for disposition.* All required disposition of noncanning olives shall be completed not later than September 30 of the crop year following the one in which the obligation is incurred or such later date that a handler may specify in a notice filed with the committee at least 15 days prior to September 15 of such subsequent crop year: *Provided,* That such notice shows that such handler has a sufficient quantity of olives held in storage to meet his obligation and such later date is not later than the date when he will have completed his disposition of olives of the crop year of obligation.

(4) *Olives not subject to incoming inspection.* Except as otherwise prescribed in § 932.51(b), any lot of olives to be used solely in the production of green olives or canned ripe olives of the "tree ripened" type shall not be subject to incoming inspection: *Provided,* That the applicable requirements of § 932.51(b) are met and the handler notifies the Inspection Service, in writing, that such lot is to be so used. Notice may be given by writing on the weight certificate "Lot to be used solely for use in the production of green olives or tree ripened olives" and a copy of such weight certificate given to the Inspection Service.

(f) *Partially exempted lots.* (1) Pursuant to § 932.55, any handler may process any lot of natural condition olives for use in the production of packaged olives which has not first been weighed and size-graded as an individual lot as required by § 932.51(a) (i) and (ii), but was combined with any other lot or lots of natural condition olives, only if (i) all the olives in the combined lot are delivered to the handler in the same day, (ii) the total net weight of the olives delivered to the handler by any person in such day does not exceed 500 pounds, (iii) each such person had authorized combination of his lot with other lots, and (iv) the combined lot of the natural condition olives is weighed and size-graded as required by § 932.51(a) (i) and (ii) prior to processing the olives.

(2) Whenever the natural condition olives in partially exempt individual lots are combined with other such olives as provided in paragraph (f)(1) of this section, the provision of the section applicable on individual lots shall apply instead to a combined lot.

(3) Each such handler shall file with the committee a weekly report showing for each day of the week the respective quantity in combined lots together with each person's authorization for combining lots. The report shall be filed upon a form supplied by the committee.

[31 FR 12635, Sept. 27, 1966, as amended at 33 FR 15631, Oct. 23, 1968; 34 FR 15389, Oct. 2, 1969; 49 FR 34440, Aug. 31, 1984; 49 FR 44448, Nov. 7, 1984]

§ 932.152 Outgoing regulations.

(a) *Inspection stations.* Processed olives shall be sampled and graded only at an inspection station which shall be any olive processing plant having facilities for in-line inspection which are satisfactory to the Inspection Service and the committee.

(b) *Inspection—(1) General.* Inspection of packaged olives for conformance with § 932.52 shall be in-line inspection. No handler shall perform the final processing operations which immediately precede the packaging of the olives unless an inspector is present when the olives are so processed. In addition, no handler shall pit olives until after such olives have been inspected for size prescribed in § 932.52(a)(2).

(2) *Pitting operations.* Pitted olives that meet the size requirements for packaging as canned whole ripe olives but are held in containers prior to final processing shall be identified to the satisfaction of the Inspection Service and be held separate and apart from other olives until such time as they are submitted for in-line inspection prior to being packaged. Pitted olives which, prior to pitting, did not meet the size requirements for packag-

ing as canned whole ripe olives but meet the applicable size requirements specified in § 932.52 for halved, sliced, chopped, or minced styles of canned ripe olives, shall be identified to the satisfaction of the Inspection Service and be held separate and apart from other olives until such time as they are submitted for in-line inspection prior to being packaged.

(c) *Certification.* (1) Each handler shall furnish daily to the Inspection Service a copy of a pack report for the preceding work day which shall contain at least the following: (i) The total number of cases of packaged olives; (ii) number of cans per case; (iii) can size; (iv) can code; (v) variety; (vi) fruit size; and (vii) style.

(2) The Inspection Service shall issue for each day's pack a signed certificate covering the quantities of such packaged olives which meet all applicable grade and size requirements. Each such certificate shall contain at least the following: (i) Date; (ii) place of inspection; (iii) name and address of handler; (iv) can code; (v) variety; (vi) fruit size; (vii) can size; (viii) style; (ix) total number of cases; (x) number of cans per case; and (xi) statement that packaged olives meet the effective minimum standards for canned ripe olives as warranted by the facts.

(d) *Olives which fail to meet grade and size requirements.* (1) Whenever any portion of a handler's daily pack of packaged olives fails to meet all applicable grade and size requirements, the Inspection Service shall issue a signed report covering such olives. Each such report shall contain at least the following: (i) Date; (ii) place of inspection; (iii) name and address of handlers; (iv) can code; (v) variety; (vi) fruit size; (vii) can size; (viii) style; (ix) total number of cases; (x) number of cans per case; and (xi) reason why the applicable requirements were not met.

(2) All such packaged olives shall be kept separate and apart from other packaged olives and shall be so identified by control cards or other means satisfactory to the Inspection Service and the committee that their identity is readily apparent. Such packaged olives may be reprocessed under supervision of the Inspection Service. Any such packaged olives that are not so reprocessed may be disposed of only in accordance with § 932.155.

(e) *Examination of certain olives received for use in the production of canned ripe olives of the tree-ripened type.* Pursuant to § 932.51(b), whenever a handler receives a lot of natural condition olives or makes a separation resulting in a sublot, solely for use in the production of canned ripe olives of the tree-ripened type he shall, at the time of receiving such lot or making such separation, notify the committee or the Inspection Service of the lot so received or the sublot so created which shall then be subject to examination by the committee, or by the Inspection Service if so designated by the committee, to assure that the olives in such lot or sublot comply with the specifications set forth in § 932.109. Each such handler shall identify all such lots and sublots of natural condition olives and keep them separate and apart from other olives received. Such identification and separation shall be maintained throughout the processing and production of such olives as canned ripe olives of the tree-ripened type.

(f) *Size designations.* (1) In lieu of the size designations specified in § 932.52(a)(2), except as provided in § 932.51(a) (1) and (2), canned whole ripe olives, other than those of the "tree-ripened" type, shall conform to the marketing order size designations listed in Table I contained herein, and shall be of a size not smaller than the applicable size requirements, tolerances and percentages listed in paragraphs (a)(2) (i), (ii), (iii), and (iv) of § 932.52.

TABLE I—CANNED WHOLE RIPE OLIVE SIZES

[Average count ranges (per pound)]

Size designation	Variety group 1		Variety group 2	
	Except Ascolano, Barouni, St. Agostino	Ascolano, Barouni, St. Agostino	Obliza	Except Obliza
Small	N.A.	N.A.	N.A.	128–140.
Medium	N.A.	N.A.	106–121	106–121.
Large	N.A.	N.A.	91–105	91–105.
Ex Large	65–75	65–88	65–88	65–88.
Jumbo	51–60	51–60	51–60	51–60.
Colossal	41–50	41–50	41–50	41–50.
Super Colossal	40 or less	40 or less	40 or less	40 or less.

N.A.—Not Applicable.

(2) The size of canned whole olives shall conform with the applicable count per pound range indicated in Table I of paragraph (f)(1) of this section. When the count per pound of whole olives falls between two count ranges, the size designation shall be that of the smaller size. The size for other styles of canned ripe olives shall be determined prior to pitting. The average count for canned whole ripe olives is determined from all containers in the sample and is calculated on the basis of the drained weight of the olives.

(g) *Size certification.* If a handler elects to have olives sized pursuant to § 932.51(a)(2), any lot of canning size olives may be used in the production of packaged olives for whole, pitted, or limited use styles without an outgoing inspection for size designation if such olives are within the average count range in Table II contained herein for that variety group, and meet such further mid-point or acceptable count requirements for the average count range in each size as approved by the committee.

TABLE II

[Average count ranges (per pound)]

Size designation	Variety group 1		Variety group 2	
	Except Ascolano, Barouni, St. Agostino	Ascolano, Barouni, St. Agostino	Obliza	Except Obliza
Small	N.A.	N.A.	N.A.	128–140.
Medium	N.A.	N.A.	106–121	106–121.
Large	N.A.	N.A.	89–105	89–105.
Ex Large	65–75	65–88	65–88	65–88.
Jumbo	51–60	51–60	51–60	51–60.
Colossal	41–50	41–50	41–50	41–50.
Super Colossal	40 or less	40 or less	40 or less	40 or less.

N.A.—Not Applicable.

[31 FR 12635, Sept. 27, 1966, as amended at 33 FR 15632, Oct. 23, 1968; 36 FR 24795, Dec. 23, 1971; 48 FR 54212, Dec. 1, 1983]

§ 932.153 Establishment of Grade and Size Requirements for Processed 1985–86 Crop Year Olives for Limited Use.

(a) *Grade.* On and after August 1, 1985, any handler may use processed olives of the respective variety group in the production of limited use styles of canned ripe olives if such olives were processed after July 31, 1985, and meet the grade requirements specified in § 932.52(a)(1) as modified by § 932.149.

(b) *Sizes.* On and after August 1, 1985, any handler may use processed olives in the production of limited use styles of canned ripe olives if such olives were harvested during the

period August 1, 1985 through July 31, 1986, and meet the following requirements:

(1) The processed olives shall be identified and kept separate and apart from any olives harvested before August 1, 1985 or after July 31, 1986.

(2) Variety Group 1 olives, except the Ascolano, Barouni, or St. Agostino varieties, shall be of a size which individually weigh 1/60 pound: *Provided,* That not to exceed 25 percent of the olives in any lot or sublot may be smaller than 1/60 pound;

(3) Variety Group 1 olives of the Ascolano, Barouni, or St. Agostino varieties shall be of a size which individually weigh 1/140 pound: *Provided,* That not to exceed 25 percent of the olives in any lot or sublot may be smaller than 1/140 pound;

(4) Variety Group 2 olives, except the Obliza variety, shall be of a size which individually weigh 1/80 pound: *Provided,* That not to exceed 20 percent of the olives in any lot or sublot may be smaller than 1/80 pound;

(5) Variety Group 2 olives of the Obliza variety shall be of a size which individually weigh 1/140 pound: *Provided,* That not to exceed 20 percent of the olives in any lot or sublot may be smaller than 1/140 pound.

[50 FR 33021, Aug. 16, 1985]

§ 932.154 Handler transfer.

(a) Except as hereinafter provided in paragraph (b) of this section, Form COC-6 "Report of Interhandler Transfer" shall be completed by the transfering handler for all lots of processed, but not packaged, olives transferred to another handler within the area and for all lots and sublots of natural condition olives transferred to another handler within the area or shipped to destinations outside the area except fresh market outlets. For natural condition and processed, but not packaged, olives transferred between handlers within the area, two completed copies of said form, signed by the transferring handler, shall accompany the lot or sublot to the receiving handler who shall certify on both copies as to receipt of the olives and forward one copy to the committee within 10 days following receipt of the olives. For natural condition olives transferred by a handler to a destination outside the area, except fresh market outlets, two copies of said form shall be completed by the transferring handler with the words "Outside the Area" included in the upper right corner of the form and one copy shall be returned to the committee within 10 days following transfer of the olives. The completed form shall contain at least the following information: (1) Name and address of both the transferor and transferee; (2) date of transfer; (3) condition (natural, processed but not packaged); (4) weight, number and size of each type of container; (5) variety; and (6) other identification (undersize olives, culls, style, etc.).

(b) Undersize or cull olives that are transferred from one handler to another and for which the transferring handler desires credit toward satisfaction of his obligation under § 932.51(a)(2) need only be accompanied by two copies of Form COC-5, report of limited and undersize and cull olives inspection and disposition: *Provided,* That such transfers are carried out under the supervision of the Inspection Service.

(c) No handler may ship any lot or sublot of natural condition olives to a destination outside the area, except fresh market outlets, unless such olives have first been size-graded and meet the disposition and holding requirements applicable under paragraphs (a)(2) and (4) of § 932.51. The size of such transferred olives shall be verified, prior to transfer, by certification issued to the transferring handler by the appropriate inspection service (Federal or Federal-State Inspection Service or the Processed Products Branch, USDA).

[31 FR 12636, Sept. 27, 1966, as amended at 36 FR 24795, Dec. 23, 1971; 49 FR 34440, Aug. 31, 1984; 49 FR 44448, Nov. 7, 1984]

§ 932.155 Special purpose shipments.

(a) The disposition of packaged olives covered by § 932.152(d) which are not reprocessed in accordance therewith shall be in conformity with the applicable provisions of this section.

(1) Under supervision of the Inspection Service, such packaged olives may be disposed of for use in the production of olive oil or dumped.

(2) Such packaged olives may be disposed of to a charitable organization for use by such organization; and any handler who wishes to so dispose of olives shall first file a written application with, and obtain written approval thereof from, the committee. Each such application shall contain at least: (i) The name and address of the handler and the charitable organization; (ii) the physical location of the charitable organization's facilities; (iii) the quantity in cases, the variety, size, can size, and can code of the packaged olives; and (iv) a certification from the charitable organization that such olives will be used by the organization and will not be sold.

(b) Prior to approval of any such application, the committee shall make such investigation as it deems necessary to verify the information therein. The committee may deny any application if it finds that the required information is incomplete or incorrect, or has reason to believe that the intended receiver is not a charitable organization, or that the handler or the organization has disposed of packaged olives contrary to a previously approved application. The committee shall notify the applicant and the organization in writing of its approval, or denial, of the application. Any such approval shall continue in effect so long as the packaged olives covered thereby are disposed of consistent therewith. The committee shall notify the handler and the organization of each such termination of approval. The handler shall furnish the committee upon demand such evidence of disposition of the packaged olives covered by an approved application as may be satisfactory to the committee.

(c) In accordance with the provisions of § 932.55(b), any handler may use processed olives in the production of packaged olives for repackaging, and ship packaged olives for repackaging, if the packaged olives grade U.S. Grade C, as defined in the then current U.S. Standards for Canned Ripe Olives or such modification thereof as shall be prescribed pursuant to § 932.52, except for the requirement that the packaged olives possess a normal flavor: *Provided*, That the failure to possess a normal flavor is due only to excessive sodium chloride.

[33 FR 15632, Oct. 23, 1968, as amended at 39 FR 38221, Oct. 30, 1974]

§ 932.160 Modification of provisions relative to handler nominees.

Pursuant to § 932.25 the nomination procedure set forth in § 932.29(b) is modified to provide that no more than two nominees for member and two nominees for alternate member positions on the committee may be affiliated with the same handler.

[39 FR 37762, Oct. 24, 1974]

§ 932.161 Reports.

(a) *Reports of olives received.* Each handler shall submit to the committee, on a form provided by the committee, for each week (Sunday through Saturday, or such other 7-day period for which the handler has submitted a request and received approval from the committee) and not later than the fourth day after the close of such week, a report showing by size designation and culls the respective quantities of each variety of olives received. In addition thereto, he shall also report the seasonal totals to date of the report.

(b) *Sales reports.* (1) Each handler shall submit to the committee, on COC Form 21 as provided by the committee, for each month and not later than the 15th day following the end of that month, a report showing the handler's total sales of packaged olives to commercial outlets in the United States, to governmental agencies, and to foreign countries. Such sales shall be reported in the following categories:

(i) Whole and whole pitted styles of canned ripe olives in consumer size containers;

(ii) Whole and whole pitted styles of canned ripe olives in institutional size containers;

(iii) Chopped style of canned ripe olives in all types of containers; and

(iv) Halved, segmented (wedged), and sliced styles of canned ripe olives in all types of containers.

The quantity in each category shall be reported in terms of the equivalent number of cases of 24 No. 300 (300×407) size cans.

(2) Each handler shall submit to the committee, on a form provided by the committee, for each month and not more than 15 days after the end of such month, a report showing the total quantity of packaged olives of the ripe and green ripe types sold during the month. Such reports shall include the following information, as applicable:

(i) With respect to the whole, pitted, and broken pitted styles of packaged olives of the ripe or green ripe type, each style shall be reported separately on COC Form 29a in terms of the quantity of each size of olives as designated on the form. Such quantity, or quantities, shall be reported in terms of the total amount packaged in each of the container sizes listed on said form except that the committee may require such reporting in terms of the equivalent number of cases of 24 No. 300 (300 x 407) size cans. Each handler shall report separately the total monthly sales of packaged olives of the green ripe type.

(ii) Limited use styles of packaged olives of the ripe or green ripe type shall be reported in terms of the quantity of each style packaged in each of the container sizes listed on COC Form 29b except that the committee may require such reporting in terms of the equivalent number of cases of 24 No. 300 (300 x 407) size cans.

(c) *Report of handler's utilization of limited size olives.* Each handler shall submit to the committee, on a form provided by the committee, upon completion of the handler's canning season, but not later than August 1st of each crop year, a report showing the quantities of limited canning size olives used in (1) halved; (2) segmented (wedged); (3) sliced; (4) chopped; (5) acidified; (6) Spanish olives; (7) Sicilian style olives; (8) Greek style olives; (9) olive oil; (10) olives dumped; and (11) any other use (specify such use).

(d) *Packaged olive inventory reports.* Each handler shall submit an inventory report to the committee, on a form provided by the committee, not later than the 15th day of each month showing the total quantity of packaged olives of the ripe and green ripe types held in storage at all locations on the last day of the preceding month. Such reports shall contain the following information, as applicable:

(1) With respect to the whole, pitted, and broken pitted styles of packaged ripe or green ripe type olives, each style shall be reported separately on COC Form 27a in terms of the packaged quantity of each size designated on the form. Such quantity, or quantities, shall be reported in terms of the total amount packaged in each of the container sizes listed on said form except that the committee may require such reporting in terms of the equivalent number of cases of 24 No. 300 (300 x 407) size cans. Each handler shall report separately the total quantity of any packaged olives of the green ripe type held in storage at all locations.

(2) Halved, sliced, segmented (wedged), and chopped styles of packaged olives of the ripe or green ripe type shall be reported in terms of the quantity of each style packaged in each of the container sizes listed on COC Form 27b except that the committee may require such reporting in terms of the equivalent number of cases of 24 No. 300 (300×407) size cans.

(e) *Processed olive bulk inventory reports.* Each handler shall submit an inventory report to the committee, on a form provided by the committee, not later than the 15th day of each month showing the total quantity of processed olives of the ripe and green ripe types held in bulk storage at all locations on the last day of the preceding month. Such reports shall contain the following information, as applicable:

(1) The total tonnage of processed olives of the ripe and green ripe types, held in storage by the handler, which are of any size that may be used in the production of packaged olives of the whole or the pitted styles shall be reported on COC Form 27c in terms of the total quantity of each size designated on the form.

(2) The total tonnage of processed olives of the ripe and green ripe types, held in storage by the handler, which are of sizes that may be used in the

production of packaged olives of the halved, sliced, segmented (wedged), or chopped style shall be reported on COC Form 27b.

(f) *Packout reports.* Each handler shall submit to the committee, on a form provided by the committee, for each month and not more than 15 days after the end of such month, a report showing the total production or packaged olives of the ripe and green ripe types. Such reports shall include the following information, as applicable:

(1) With respect to the whole, pitted, and broken pitted styles of packaged olives of the ripe or the green ripe types, each style shall be reported separately on COC Form 28a in terms of the total quantity of each size of olives as designated on the form. Such quantity, or quantities, shall be reported in terms of the total amount packaged in each of the container sizes listed on said form except that the committee may require such reporting in terms of the equivalent number of cases of 24 No. 300 (300 x 407) size cans. Each handler shall report separately the total monthly production of packaged olives of the green ripe type.

(2) Halved, sliced, segmented (wedged), and chopped styles of packaged olives of the ripe or green ripe type shall be reported in terms of the quantity of each style packaged in each of the container sizes listed on COC Form 28b except that the committee may require such reporting in terms of the equivalent number of cases of 24 No. 300 (300×407) size cans.

[33 FR 15632, Oct. 23, 1968, as amended at 36 FR 24795, Dec. 23, 1971; 47 FR 13118, Mar. 29, 1982; 49 FR 34440, 34441, Aug. 31, 1984; 49 FR 44448, Nov. 7, 1984]

NOTE: After January 1, 1979, "Budget of Expenses and Rate of Assessment" regulations (e.g., sections .200 through .299) and "Handling" regulations (e.g., sections .300 through .399) which are in effect for a year or less, will not be carried in the Code of Federal Regulations. For FEDERAL REGISTER citations affecting these regulations, see the "List of CFR Sections Affected" in this volume.

PART 944—FRUITS; IMPORT REGULATIONS

Sec.

944.28 Avocado Import Grade Regulation.
944.106 Grapefruit Regulation 6.
944.209 Lime Import Regulation 10.
944.312 Orange Import Regulation 13.
944.400 Designated inspection services and procedure for obtaining inspection and certification of imported avocados, grapefruit, limes, oranges, and table grapes regulated under section 8e of the Agricultural Marketing Agreement Act of 1937, as amended.
944.401 Olive Regulation 1.
944.503 Table Grape Import Regulation 3.

AUTHORITY: Secs. 1-19, 48 Stat. 31, as amended; 7 U.S.C. 601-674.

NOTE: After January 1, 1979, Import regulations which are in effect for a year or less, will not be carried in the Code of Federal Regulations. For FEDERAL REGISTER citations affecting these regulations, see the "List of CFR Sections Affected" in this volume.

§ 944.28 Avocado Import Grade Regulation.

(a) Pursuant to section 8e of the act and Part 944-Fruits; Import Regulations, the importation into the United States of any avocados is prohibited on and after May 28, 1985, unless such avocados grade at least U.S. No. 2, as such grade is defined in the United States Standards for Florida Avocados (7 CFR 51.3050-3069). Such grade requirement is the same as that specified in § 915.306 for avocados grown in South Florida under M.O. 915 (7 CFR Part 915).

(b) The Federal or Federal-State Inspection Service, Fruit and Vegetable Division, Agricultural Marketing Service, United States Department of Agriculture, is designated as the government inspection service for certifying the grade, size, quality, and maturity of avocados that are imported into the United States. Inspection by the Federal or Federal-State Inspection Service with evidence thereof in the form of an official inspection certificate, issued by the respective service, applicable to the particular shipment of avocados, is required on all imports. The inspection and certification services will be available upon application in accordance with the rules and regulations governing inspection and certifi-

cation of fresh fruits, vegetables, and other products (7 CFR Part 51) and in accordance with the regulations designating inspection services and procedure for obtaining inspection and certification (7 CFR 944.400).

(c) The term "importation" means release from custody of the United States Customs Service.

(d) Any person may import up to 55 pounds of avocados exempt from the requirements specified in this section.

(e) Any lot or portion thereof which fails to meet the import requirements prior to or after reconditioning may be exported or disposed of under the supervision of the Federal or Federal-State Inspection Service with the costs of certifying the disposal of such lot borne by the importer.

[50 FR 21032, May 22, 1985]

§ 944.106 Grapefruit Regulation 6.

(a) *Applicability to imports.* Pursuant to Section 8e of the Act and Part 944—Fruits; Import Regulations, on and after December 11, 1981, the importation into the United States of any variety of grapefruit listed in Column (1) of said table is prohibited unless such variety meets the applicable minimum grade and size specified for such variety in Columns (3) and (4) of said table. In the determination of minimum size as prescribed in Table I, a tolerance is permitted as specified in paragraph (c) of § 905.306 of this chapter.

(b) The Federal or Federal-State Inspection Service, Fruit and Vegetable Division, Agricultural Marketing Service, United States Department of Agriculture, is designated as the governmental inspection service for certifying the grade, size, quality, and maturity of grapefruit that are imported into the United States. Inspection by the Federal or Federal-State Inspection Service with evidence thereof in the form of an official inspection certificate, issued by the respective service, applicable to the particular shipment of grapefruit, is required on all imports. The inspection and certification services will be available upon application in accordance with the rules and regulations governing inspection and certification of fresh fruits, vegetables, and other products (7 CFR Part 2851) and in accordance with the Procedure for Requesting Inspection and Designating the Agencies to Perform Required Inspection and Certification (7 CFR 944.400).

(c) Notwithstanding any other provisions of this regulation, any importation of grapefruit which, in the aggregate, does not exceed ten standard packed cartons, equivalent to four-fifths (⅘) of a United States bushel of grapefruit, each, or equivalent quantity, may be imported without regard to the requirements specified herein.

(d) No provisions of this section shall supersede the restrictions or prohibitions on grapefruit under the Plant Quarantine Act of 1912.

(e) Any lot or portion thereof which fails to meet the import requirements prior to or after reconditioning may be exported or disposed of under the supervision of the Federal or Federal-State Inspection Service with the costs of certifying the disposal of said lot borne by the importer.

(f) It is determined that imports of grapefruits, during the effective time of this regulation, are in most direct competition with grapefruit grown in the State of Florida. The requirements of this section are the same as those being made effective for grapefruit grown in Florida.

(g) Terms used herein relating to grade, except Improved No. 2 grade, and diameter shall have the same meaning as in the United States Standards for Grades of Florida Grapefruit (7 CFR 2851.750 through 2851.784). Improved No. 2 shall mean the same as in the marketing agreement and Order No. 905, both as amended (7 CFR Part 905). Importation means release from custody of the United States Customs Service.

[46 FR 60172, Dec. 8, 1981]

§ 944.209 Lime Import Regulation 10.

(a) *Applicability to imports.* Pursuant to Section 8e of the act and Part 944—Fruits; Import Regulations, the importation into the United States of any limes is prohibited on or after June 10, 1985, unless such limes meet the minimum grade and size requirements specified in § 911.344 Florida Lime Regulation 43.

(b) The Federal or Federal-State Inspection Service, Fruit and Vegetable Division, Agricultural Marketing Service, United States Department of Agriculture is designated as the governmental inspection service for certifying the grade, size, quality and maturity of limes that are imported into the United States. Inspection by the Federal or Federal-State Inspection Service with evidence thereof in the form of an official inspection certificate, issued by the respective Service, applicable to the particular shipment of limes, is required on all imports. The inspection and certification services will be available upon application in accordance with the rules and regulations governing inspection and certification of fresh fruits, vegetables, and other products (7 CFR Part 2851) and in accordance with the Procedure for Requesting Inspection and Certification (7 CFR 944.400).

(c) The term "importation" means release from custody of the United States Customs Service.

(d) Any lot or portion thereof which fails to meet the import requirements prior to or after reconditioning may be exported or disposed of under the supervision of the Federal or Federal-State Inspection Service with the costs of certifying the disposal of said lot borne by the importer.

(e) *Minimum quantity exemption:* Any person may import up to 250 pounds of limes exempt from the requirements specified in this section.

[46 FR 35911, July 13, 1981, as amended at 50 FR 23665, June 5, 1985]

§ 944.312 Orange Import Regulation 13.

(a) *Applicability to imports.* Pursuant to section 8e of the act and Part 944—Fruits; Import Regulations, the importation into the United States of any oranges is prohibited on and after February 8, 1982, unless such oranges meet the minimum grade and size requirements specified in paragraphs (a)(1) and (a)(2) of § 906.365 Texas Orange and Grapefruit Regulation 34.

(b) It is hereby determined that oranges imported into the United States are in most direct competition with oranges grown in the Lower Rio Grande Valley in Texas, and that the grade and size requirements specified in this section are the same as those being made effective for Texas oranges in § 906.365.

(c) The Federal or Federal-State Inspection Service, Fruit and Vegetable Division, Agricultural Marketing Service, United States Department of Agriculture, is designated as the governmental inspection service for certifying the grade, size, quality, and maturity of oranges that are imported into the United States. Inspection by the Federal or Federal-State Inspection Service with evidence thereof in the form of an official inspection certificate, issued by the respective service, applicable to the particular shipment of oranges, is required on all imports. The inspection and certification services will be available upon application in accordance with the rules and regulations governing inspection and certification of fresh fruits, vegetables, and other products (7 CFR Part 2851) and in accordance with the Procedure for Requesting Inspection and Designating the Agencies to Perform Required Inspection and Certification (7 CFR Part 944).

(d) The term "importation" means release from custody of the United States Customs Service.

(e) *Minimum quantity exemption.* Any person may import up to 10⅞ bushel cartons, or equivalent quantity, of oranges exempt from the requirements specified in this section, except for oranges which have been inspected and found not to meet such requirements.

(f) Any lot or portion thereof which fails to meet the import requirements prior to or after reconditioning may be exported or disposed of under the supervision of the Federal or Federal-State Inspection Service with the costs of certifying the disposal of said lot borne by the importer.

[47 FR 1266, Jan. 12, 1982]

§ 944.400 Designated inspection services and procedure for obtaining inspection and certification of imported avocados, grapefruit, limes, oranges, and table grapes regulated under section 8e of the Agricultural Marketing Agreement Act of 1937, as amended.

(a) The Federal or Federal-State Inspection Service, Fruit and Vegetable Division, Agricultural Marketing Service, United States Department of Agriculture, is hereby designated as the governmental inspection service for the purpose of certifying the grade, size, quality, and maturity of avocados, grapefruit, limes, oranges and table grapes that are imported into the United States. Inspection by the Federal or Federal-State Inspection Service with appropriate evidence thereof in the form of an official inspection certificate, issued by the respective service, applicable to the particular shipment of the specified fruit, is required on all imports. Such inspection and certification services will be available upon application in accordance with the Regulations Governing Inspection, Certification and Standards for Fresh Fruits, Vegetables, and Other Products (7 CFR Part 51) but, since inspectors are not located in the immediate vicinity of some of the small ports of entry, such as those in southern California, importers of avocados, grapefruit, limes, oranges, and table grapes should make arrangements for inspection, through the applicable one of the following offices, at least the specified number of days prior to the time when the fruit will be imported:

§ 944.503 Table Grape Import Regulation 3.

(a) Pursuant to section 8e of the Act and Part 944—Fruits; Import Regulations, during the period May 6 through August 1, 1985, and during the period May 1 through August 15 of each year thereafter, the importation into the United States of any variety of vinifera species table grapes, except Emperor, Calmeria, Almeria, and Ribier varieties, is prohibited unless such grapes meet the minimum grade and size requirements specified in § 51.884 for U.S. No. 1 Table grade, as set forth in the United States Standards for Grades of Table Grapes (European or Vinifera Type, 7 CFR 51.880 through 51.912), except that grapes of the Flame Seedless variety shall meet the minimum berry requirement of ten-sixteenths of an inch, and minimum maturity standards in accordance with applicable sampling and testing procedures specified in sections 1436.3, 1436.5, 1436.6, 1436.7, 1436.12,and 1436.17 of Article 25 of the California Administrative Code (Title 3). Such minimum maturity standards are incorporated by reference, copies of which are available from William J. Doyle, Chief, Fruit Branch, F&V, AMS, USDA, Washington, D.C. 20250, telephone 202-447-5975. They are also available for inspection at the office of the Federal Register Information Center, Room 8301, 1100 L Street NW., Washington, D.C. 20408. This incorporation by reference was approved by the Director of the Federal Register. These materials are incorporated as they exist on the date of approval and a notice of any change in these materials will be published in the FEDERAL REGISTER.

(b) The Federal or Federal-State Inspection Service, Fruit and Vegetable Division, Agricultural Marketing Service, United States Department of Agriculture, is designated as the governmental inspection service for certifying the grade, size, quality, and maturity of table grapes that are imported into the United States. Inspection by the Federal or Federal-State Inspection Service with evidence thereof in the form of an official inspection certificate, issued by the respective service, applicable to the particular shipment of table grapes, is required on all imports. The inspection and certification services will be available upon application in accordance with the rules and regulations governing inspection and certification of fresh fruits, vegetables, and other products (7 CFR Part 51) and in accordance with the regulation designating inspection services and procedure for obtaining inspection and certification (7 CFR 944.400).

(c) The term "importation" means release from custody of the United States Customs Service.

(d) Any lot or portion thereof which fails to meet the import requirements prior to or after reconditioning may be exported or disposed of under the supervision of the Federal or Federal-State Inspection Service with the costs of certifying the disposal of such lot borne by the importer.

[50 FR 18852, May 3, 1985, as amended at 50 FR 32161, Aug. 9, 1985]

PORTS, OFFICES AND ADVANCE NOTICE

Eastern Region

In Alabama, Officer In Charge, Post Office Box 244, Mobile, AL 36601, PH: 205-690-6154, or

In Jacksonville, Florida, Officer In Charge, Unit 8, 3335 N. Edgewood Ave., Jacksonville, FL 32205, PH: 904-354-5983, or

In Miami, Florida, Officer In Charge, 1350 N.W. 12th Ave., RM. 530, Miami FL 33136, PH: 305-324-6116, or

In Maryland, Officer In Charge, Maryland Wholesale Produce Market—Building B Unit 13, Jessup, MD 20794, PH: 301-799-5899, or

In Massachusetts, Officer In Charge, Boston Terminal Market, Room 1, 34 Market Street, Everett, MA 02149, PH: 617-389-2480, or

In Buffalo, New York, Officer In Charge, 176 Niagara Frontier Food Terminal—Rm. 7, Buffalo, NY 14206, PH: 716-824-1585, or

In New Jersey, Officer In Charge, Federal Building, RM. 839, 970 Broad Street, Newark, NJ 07102, PH: 201-645-2208, or

In New York, New York, Officer In Charge, Room 28-A, Hunts Point Market, Bronx, NY 10474, PH: 212-991-7669, or

In Pennsylvania, Officer In Charge, 293 Produce Building, 3301 S. Galloway Street, Philadelphia, PA 19148, PH: 215-336-0845, or

In Virginia, Officer In Charge, 3661 Virginia Beach Blvd., Norfolk, VA 23502, PH: 804-441-6218, or

In Puerto Rico, Officer In Charge, Post Office Box 9112, Santurce, PR 00908, PH: 809-783-2230.

All other Eastern Port of entry: Regional Director Skyline Office Building, 5205 Leesburg Pike—Suite 806, Falls Church, VA 22041, PH: 703-756-6781.

Central Region

In Louisiana, Officer In Charge, 5027 U.S. Postal Service Building, 701 Loyola Avenue, New Orleans, LA 70113, PH: 504-589-6741, or

In Michigan, Officer In Charge, 90 Detroit Union Produce, 7201 West Fort Street, Detroit, MI 48209, PH: 313-226-6059, or

In Minnesota, Officer In Charge, Agriculture Building Room 226, 90 West Plato Boulevard, St. Paul, MN 55107, PH: 612-296-8557, or

In El Paso, Officer In Charge, 6070 Gateway East, Suite 410, El Paso, TX 79905, PH: 915-543-7723, or

In Houston, Texas, Officer In Charge, 3100 Produce Row, Room 14, Houston, TX 77023, PH: 713-923-2557.

All other Texas Ports: Officer In Charge, Post Office Box 107, San Juan, TX 78589, PH: 512-787-4091.

All other Central Ports of Entry: Regional Director, Room 1012, 610 South Canal Street, Chicago, IL 60607, PH: 312-353-6225.

Western Region

In Arizona, Officer In Charge, Post Office Box 1485, Nogales, AZ 85621, PH: 602-281-0783, or

In Los Angeles, California, Officer In Charge, Wholesale Terminal Bldg., Room 271, 784 South Central Avenue, Los Angeles, CA 90021, PH: 213-688-2489, or

In San Francisco, California, Officer In Charge, P.O. Box 4266, Burlingame, CA 94010, PH: 415-876-1093 & 1094, or

In Hawaii, Officer In Charge, P.O. Box 22159, Pawaa Substation, Honolulu, HI 96822, PH: 808-548-7147, or

In Oregon, Officer In Charge, Cascade Plaza, Suite 125, 2828 S.W. Corbett, Portland, OR 97201, PH: 503-229-6161, or

In Washington, Officer In Charge, 5507 Sixth Avenue South, Seattle, WA 98108, PH: 206-764-3500, or

In New Mexico, Officer In Charge, New Mexico Market and Development Branch, New Mexico Department of Agriculture, P.O. Box 5600, Las Cruces, NM 88003, PH: 505-646-4929.

All other Western Ports of Entry: Regional Director, P.O. Box 214287, Sacramento, CA 95821, PH: 916-484-4952 & 3549.

Headquarters: Washington, DC: Chief, Fresh Products Branch, Fruit and Vegetable Division, AMS, Room 2052-S. Bldg., U.S. Department of Agriculture, Washington, D.C. 20250, PH: 202-447-5870.

Notification:

Port Offices—at least one (1) day;
Regional Director—at least two (2) days;
Headquarters—at least three (3) days.

(b) Inspection certificates shall cover only the quantity of fruit that is being imported at a particular port of entry by a particular importer.

(c) The inspection performed, and certificates issued, by the Federal or Federal-State Inspection Service shall be in accordance with the rules and

regulations of the Department governing the inspection and certification of fresh fruits, vegetables, and other products (7 CFR Part 51). The cost of any inspection and certification shall be borne by the applicant therefor.

(d) Each inspection certificate issued with respect to any of the specified fruits to be imported into the United States shall set forth among other things:

(1) The name and place of inspection;

(2) The name of the shipper, or applicant;

(3) The commodity inspected;

(4) The quantity of the commodity covered by the certificate;

(5) The principal identifying marks on the container;

(6) The railroad car initials and number, the truck and the trailer license number, the name of the vessel, the name of the air carrier, or other identification of the shipment; and

(7) The following statement if the facts warrant: Meets U.S. import requirements under section 8e of the Agricultural Marketing Agreement Act of 1937, as amended.

[48 FR 44459, Sept. 29, 1983]

§ 944.401 Olive Regulation 1.

(a) *Definitions.* (1) "Canned ripe olives" means olives in hermetically sealed containers and heat sterilized under pressure, of the two distinct types "ripe" and "green-ripe" as defined in the current U.S. Standards for Grades of Canned Ripe Olives. The term does not include Spanish-style green olives.

(2) "Spanish-style green olives" means olives packed in brine and which have been fermented and cured, otherwise known as "green olives."

(3) "Variety group 1" means the following varieties and any mutations, sports, or other derivations of such varieties: Aghizi Shami, Amellau Ascolano, Ascolano dura, Azapa, Balady, Barouni, Carydolia, Cucco, Gigante di Cerignola, Gordale, Grosane, Jahlut, Polymorpha, Prunara, Ropades, Sevillano, St. Agostino, Tafahi, and Touffahi.

(4) "Variety group 2" means the following varieties and any mutations, sports, or other derivations of such varieties: Manzanillo, Mission, Nevadillo, Obliza, and Redding Picholine.

(5) "USDA Inspector" means an inspector of the Processed Products Branch, Fruit and Vegetable Division, Agricultural Marketing Service, U.S. Department of Agriculture, or any other duly authorized employee of the Department.

(6) "Importation" means release from custody of the U.S. Bureau of Customs.

(7) "Limited use" means the use of processed olives in the production of packaged olives of the halved, segmented (wedged), sliced, or chopped styles, as defined in said standards.

(8) Terms used in this section shall have the same meaning as are given to the respective terms in the current U.S. Standards for Grades of Canned Ripe Olives (7 CFR Part 52) including the terms "U.S. Grade B", "U.S. Grade C", "size", "character", "defects", and "ripe type": *Provided,* That with respect to defects used in Table I of § 932.149 (and cited herein) that are not defined in such current U.S. Standards, the definitions of those defects contained in that section shall apply:

(b) The importation into the United States of any canned ripe olives is prohibited unless such olives are inspected and meet the following applicable requirements: *Provided,* That olives imported in bulk form and used in the production of any canned ripe olives are subject to such applicable requirements and the additional requirements in paragraph (b)(12) of this section.

(1) Canned ripe olives shall grade at least U.S. Grade C: *Provided,* That with respect to defects, the limits for defects as contained in Table I of § 932.149 shall apply as shall the requirements of U.S. Grade B for character for canned whole, pitted and broken pitted olives, and the requirement that canned chopped olives be practically free from identifiable units of pit caps, end slices, and slices as defined in § 932.149(a)(2): *Provided further,* That no requirements shall be applicable with respect to color and blemishes for canned green ripe olives imported.

(2) Canned whole ripe olives of Variety Group 1, except the Ascolano, Bar-

ouni, and St. Agostino varieties, shall be of such a size that not more than 25 percent, by count, of the olives may weigh less than 1/75 pound (6.0 grams) each, except that not more than 10 percent, by count, of the olives may weigh less than 1/82 pound (5.5 grams) each;

(3) Canned whole ripe Variety Group 1 olives of the Ascolano, Barouni, and St. Agostino varieties, shall be of such a size that not more than 25 percent, by count, of the olives may weigh less than 1/88 pound (5 grams) each except that not more than 10 percent, by count, of the olives may weigh less than 1/98 pound (4.6 grams) each;

(4) Canned whole ripe olives of Variety Group 2, except the Obliza variety, shall be of such a size that not more than 35 percent, by count, of the olives may weigh less than 1/140 pound (3.2 grams) each except that not more than 7 percent, by count, of the olives may weigh less than 1/160 pound (2.8 grams) each;

(5) Canned whole ripe Variety Group 2 olives of the Obliza variety, shall be of such a size that not more than 35 percent, by count, of the olives may weigh less than 1/121 pound (3.7 grams) each except that not more than 7 percent, by count, of the olives may weigh less than 1/135 pound (3.3 grams) each;

(6) Canned whole ripe olives not identifiable as to variety or variety group shall be of such a size that not more than 35 percent, by count, of the olives may weigh less than 1/140 pound (3.2 grams) each except that not more than 7 percent, by count, of the olives may weigh less than 1/160 pound (2.8 grams) each;

(7) Canned pitted ripe olives of Variety Group 1, except the Ascolano, Barouni, and St. Agostino varieties, shall be of such a size that not more than 25 percent, by count, of the olives may measure less than 21 millimeters in diameter;

(8) Canned pitted ripe Variety Group 1 olives of the Ascolano, Barouni, and St. Agostino varieties, shall be of such a size that not more than 25 percent, by count, of the olives may measure less than 19 millimeters in diameter;

(9) Canned pitted ripe olives of Variety Group 2, except the Obliza variety, shall be of such a size that not more then 35 percent, by count, of the olives may measure less than 16 millimeters in diameter;

(10) Canned pitted ripe Variety Group 2 olives of the Obliza variety, shall be of such a size that not more than 35 percent, by count, of the olives may measure less than 17 millimeters in diameter;

(11) Canned pitted ripe olives not identifiable as to variety or variety group shall be of such a size that not more than 35 percent, by count, of the olives may measure less than 16 millimeters in diameter;

(12) Imported bulk olives when used in the production of canned ripe olives must be inspected and certified as prescribed in this section. Imported bulk olives, which do not meet the applicable minimum size requirements specified in paragraphs (b)(2) through (b)(11) of this section, may be used for limited use: *Provided,* That such imported bulk olives may be used for limited use, but any such olives so used shall not be smaller than the following applicable minimum size:

(i) Whole ripe olives of Variety Group 1, except the Ascolano, Barouni, or St. Agostino varieties, of a size that not more than 25 percent, by count, of the olives may be smaller than 1/90 pound (5 grams) each.

(ii) Whole ripe olives of Variety Group 1 of the Ascolano, Barouni, or St. Agostino varieties of a size that not more than 25 percent, by count, of the olives may be smaller than 1/140 pound (3.2 grams) each.

(iii) Whole ripe olives of Variety Group 2, except the Obliza variety, of a size that not more than 20 percent of the olives by count, may be smaller than 1/180 pound (2.5 grams) each.

(iv) Whole ripe olives of Variety Group 2 of the Obliza variety of a size that not more than 20 percent, by count, of the olives may be smaller than 1/140 pound (3.2 grams) each.

(v) Whole ripe olives not identifiable as to variety or variety group of a size that not more than 20 percent of the olives, by count, may be smaller than 1/180 pound (2.5 grams) each.

(vi) Pitted ripe olives of Variety Group 1, except the Ascolano, Barouni, or St. Agostino varieties of a size that not more than 25 percent, by count, of the olives may measure less than 20 millimeters in diameter.

(vii) Pitted ripe olives of Variety Group 1 of the Ascolano, Barouni, or St. Agostino varieties of a size that not more than 25 percent, by count, of the olives may be smaller than 16 millimeters in diameter.

(viii) Pitted ripe olives of Variety Group 2, except the Obliza variety, of a size that not more than 20 percent of the olives, by count, may be smaller than 14 millimeters.

(ix) Pitted ripe olives of Variety Group 2 of the Obliza variety of a size that not more than 20 percent, by count, of the olives may be smaller than 16 millimeters.

(x) Pitted ripe olives not identifiable as to variety or variety group of a size that not more than 20 percent, by count, of the olives may be smaller than 14 millimeters in diameter.

(c) The Processed Products Branch, Fruit and Vegetable Division, Agricultural Marketing Service, U.S. Department of Agriculture, is hereby designated as the governmental inspection service for the purpose of certifying the grade and size of processed olives from imported bulk lots for use in canned ripe olives and the grade and size of imported canned ripe olives. Inspection by said inspection service with appropriate evidence thereof in the form of an official inspection certificate, issued by the service and applicable to the particular lot of olives is required. With respect to imported bulk olives, inspection and certification shall be completed prior to use as packaged ripe olives. With respect to canned ripe olives, inspection and certification shall be completed prior to importation. Any lot of olives which fails to meet the import requirements may be exported or disposed of under supervision of the Processed Products Branch, Fruit and Vegetable Division, AMS, USDA, with the cost of certifying the disposal borne by the importer. Such inspection and certification services will be available, upon application, in accordance with the applicable regulations governing the inspection and certification of Processed Fruits and Vegetables, Processed Products Thereof, and Certain Other Processed Food Products (Part 52 of this title). Application for inspection of canned ripe olives shall be made not less than 10 days prior to the time when the olives will be imported. Since inspectors are not located in the immediate vicinity of some of the small ports of entry, importers of canned ripe olives shall make arrangements for inspection through one of the following offices at least 10 days prior to the time when the olives will be imported:

OFFICE AND TELEPHONE

Southeastern Regional Office, 98 Third Street, SW., Winter Haven, Florida 33880, (813) 294-4218;

Central Regional Office, U.S. Custom House, Room 1014, 610 South Canal Street, Chicago, Illinois 60607, (312) 353-6217 or 6218;

Western Regional Office, 111 West St. John Street, Suite 416, San Jose, California 95113, (408) 275-7253.

Application for inspection of processed bulk olives shall be made not less than 3 days prior to use in the production of canned ripe olives. Such application shall be made through the following office:

Western Regional Office, 111 West St. John Street, Suite 416, San Jose, California 95113, (408) 275-7253.

(d) Inspection certificates shall cover only (1) the quantity of canned ripe olives that is being imported at a particular port of entry by a particular importer or (2) the quantity of canned ripe olives processed from a lot or sublot of imported bulk olives.

(e) Inspection shall be performed by USDA inspectors in accordance with said regulations governing the inspection and certification of processed fruits and vegetables and related products (Part 52 of this title). The cost of each such inspection and related certification shall be borne by the applicant therefore. Applications for inspection shall be accompanied by, or there shall be submitted promptly thereafter, either (1) an "on board" bill of lading designating the lots to be entered as canned ripe olives, (2) a list of such lots by variety and their iden-

tifying marks, or (3) a list identifying lots by variety of imported bulk olives.

(f) Notwithstanding any other provisions of this regulation, any importation of canned ripe olives or olives imported in bulk for use in the production of canned ripe olives which, in the aggregate, does not exceed 100 pounds drained weight may be imported without regard to the requirements of this section.

(g) It is hereby determined, on the basis of the information currently available, that the grade and size requirements set forth in this regulation are comparable to those applicable to California canned ripe olives.

(h) No provisions of this section shall supersede the restrictions or prohibitions on canned ripe olives under the provisions of the Federal Food, Drug, and Cosmetic Act, or any other applicable laws or regulations or the need to comply with applicable food and sanitary regulations of city, county, State, or Federal agencies.

(i) Each inspection certificate issued with respect to canned ripe olives to be imported into the United States and canned ripe olives processed from a lot or sublot of imported bulk olives shall set forth among other things:

(1) The date and place of inspection;

(2) The name of the shipper or applicant;

(3) The commodity inspected;

(4) The quantity of the commodity covered by the certificate;

(5) The principal identifying marks on the container;

(6) The railroad car initials and number, the truck and the trailer license number, the name of the vessel, or other identification of the shipment;

(7) The Consumption Entry Number for Canned Ripe Olives; and

(8) The following statement if the facts warrant: Meets the U.S. import requirements under section 8e of the Agricultural Marketing Agreement Act of 1937, as amended.

[47 FR 51349, Nov. 15, 1982, as amended at 49 FR 34441, Aug. 31, 1984; 49 FR 44448, Nov. 7, 1984]

PART 945—IRISH POTATOES GROWN IN CERTAIN DESIGNATED COUNTIES IN IDAHO, AND MALHEUR COUNTY, OREGON

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AUTHORITY: Secs. 1-19, 48 Stat. 31, as amended; 7 U.S.C. 601-674.

Subpart—Order Regulating Handling

SOURCE: 23 FR 5709, July 30, 1958, unless otherwise noted. Redesignated at 26 FR 12751, Dec. 30, 1961.

DEFINITIONS

§ 945.1 Secretary.

"Secretary" means the Secretary of Agriculture of the United States, or any officer or employee of the United States Department of Agriculture to whom authority has heretofore been delegated, or to whom authority may hereafter be delegated, to act in his stead.

§ 945.2 Act.

"Act" means Public Act No. 10, 73d Congress, as amended and as reenacted and amended by the Agricultural Marketing Agreement Act of 1937, as amended (48 Stat. 31, as amended; 7 U.S.C. 601 et seq.; 68 Stat. 906, 1047).

§ 945.3 Person.

"Person" means an individual, partnership, corporation, association, or any other business unit.

§ 945.4 Production area.

"Production area" means all territory included within Malheur County, Oregon, and the counties of Adams, Valley, Lemhi, Clark, and Fremont in the State of Idaho, and all of the counties in Idaho lying south thereof.

§ 945.5 Potatoes.

"Potatoes" means all varieties of Irish potatoes grown within the aforesaid production area.

§ 945.6 Varieties.

"Varieties" means and includes all classifications or subdivisions of Irish potatoes according to those definitive characteristics now or hereafter recognized by the United States Department of Agriculture.

§ 945.7 Certified seed potatoes.

"Certified seed potatoes" means and includes all potatoes officially certified and tagged, marked, or otherwise appropriately identified, under the supervision of the official seed potato certifying agency of the State in which the potatoes are grown, or other seed certification agencies which the Secretary may designate.

§ 945.8 Handler.

"Handler" is synonymous with shipper and means any person (except a common or contract carrier of potatoes owned by another person) who ships potatoes.

§ 945.9 Ship or handle.

"Ship" or "handle" means to pack, sell, transport, or in any other way to place potatoes in the current of interstate or foreign commerce between the production area and any point outside thereof, or so as directly to burden, obstruct, or affect any such commerce.

§ 945.10 Producer.

"Producer" means any person engaged in the production of potatoes for market.

§ 945.11 Committee.

"Committee" means the administrative committee, called the Idaho-Eastern Oregon Potato Committee, established pursuant to § 945.20.

§ 945.12 Fiscal period.

"Fiscal period" means the period beginning and ending on the dates approved by the Secretary pursuant to recommendations by the committee.

§ 945.13 Grade and size.

"Grade" means any one of the officially established grades of potatoes, and "size" means any one of the officially established sizes of potatoes, as defined and set forth in:

(a) The United States Standards for Potatoes issued by the United States Department of Agriculture (§§ 51.1540 to 51.1556 of this title), or amendments thereto, or modifications thereof, or variations based thereon;

(b) The United States Consumer Standards for Potatoes as issued by the United States Department of Agriculture (§§ 51.1575 to 51.1587 of this title), or amendments thereto, or modifications thereof, or variations based thereon; or

(c) Standards for potatoes issued by the State from which the potatoes are shipped, or amendments thereto, or modifications thereof, or variations based thereon.

§ 945.14 Export.

"Export" means shipment of potatoes beyond the boundaries of continental United States.

§ 945.15 Pack.

"Pack" means a quantity of potatoes in any type of container and which falls within specific weight limits or within specific grade and/or size limits, or any combination thereof, recommended by the committee and approved by the Secretary.

§ 945.16 Container.

"Container" means a sack, box, bag, crate, hamper, basket, carton, package, barrel, or any other type of receptacle used in the packaging, transportation, sale, or other handling of potatoes.

§ 945.17 District.

"District" means each of the geographical divisions of the production area established pursuant to § 945.22 or as reestablished pursuant to § 945.23.

ADMINISTRATIVE COMMITTEE

§ 945.20 Establishment and membership.

(a) The Idaho-Eastern Oregon Potato Committee consisting of 8 members, of whom 5 shall be producers and 3 shall be handlers, is hereby established. For each member of the committee there shall be an alternate who shall have the same qualifications as the member.

(b) Each person selected as a committee member or alternate to represent producers shall be an individual who is a producer in the district for which selected or an officer or employee of a producer in such district, and shall be a resident thereof. A producer who handles potatoes other than of his own production shall qualify as a producer under this section, and §§ 945.24, 945.25, 945.27, and 945.29, only if the potatoes of his own production constituted 51 percent or more of the total quantity of potatoes handled by him during the portion of the then current season preceding his nomination.

(c) Each person selected as a committee member or alternate to represent handlers shall be an individual who is a handler or an officer or employee of a handler, and shall be a resident of the production area.

§ 945.21 Term of office.

The term of office of committee members and alternates shall be for one year beginning on the first day of June and continuing until the following May 31. Committee members and alternates shall serve during the term of office for which they are selected

and have qualified, or during that portion thereof beginning on the date on which they qualify and continuing until the end thereof, and until their successors are selected and have qualified.

§ 945.22 Districts.

For the purpose of selecting committee members, the following districts of the production area are hereby established:

(a) *District No. 1.* The counties of Oneida, Power, Bingham, Butte, Clark, and all counties lying east thereof in Idaho;

(b) *District No. 2.* Malheur County, Oregon, and counties of Owyhee, Elmore, Boise, Valley, and all counties lying west thereof in Idaho;

(c) *District No. 3.* The remaining designated counties in Idaho included in the production area, and not included in District 1 or District 2.

§ 945.23 Redistricting.

The Secretary, upon recommendation of the committee, may reestablish districts within the production area and may reapportion committee membership among the various districts. In recommending any such changes in districts or representation, the committee shall give consideration to: (a) Shifts in potato acreage within districts and within the production area during recent years; (b) the importance of new potato production in its relation to existing districts; (c) the equitable relationship between the committee membership and districts; (d) economies to result for producers in promoting efficient administration due to redistricting or reapportionment of members within districts; and (e) other relevant factors.

§ 945.24 Selection.

Members and alternates of the committee shall be selected by the Secretary on the following basis (unless otherwise apportioned pursuant to § 945.23) from nominations made pursuant to § 945.25 or from other eligible persons: (a) Two producer members and one handler member, with their respective alternates, from District No. 1; (b) one producer member and one handler member, with their respective alternates, from District No. 2; and (c) two producer members and one handler member, with their respective alternates, from District No. 3.

§ 945.25 Nominations.

For the selection by the Secretary of the members and alternates of the Idaho-Eastern Oregon Potato Committee, nominations may be made in the manner indicated in this section. Nominations for members and alternates may be submitted by producers or handlers, as the case may be, or groups of either thereof, on an elective basis or otherwise.

(a) In order to provide nominations for committee members and alternates, the committee shall hold, or cause to be held, prior to April 1 of each year, one or more meetings of producers and of handlers in each district to nominate committee members and alternates.

(b) In arranging for such meetings, the committee may, if it deems it to be desirable, utilize the services and facilities of existing organizations and agencies, and may combine its meetings with others.

(c) At each such meeting, at least one nominee shall be designated for each position as member and for each position as alternate member on the committee.

(d) Only producers may participate in designating nominees for producer members and alternates, and only handlers may participate in designating nominees for handler members and alternates.

(e) Nominations shall be supplied to the Secretary, in such manner and form as he may prescribe, not later than May 1 of each year.

(f) Each person who is both a handler and a producer may vote either as a handler or as a producer and may elect the group in which he will vote.

(g) Regardless of the number of districts in which a person produces or handles potatoes, each such person is entitled to cast only one vote on behalf of himself, his agents, subsidiaries, affiliates, and representatives, in designating nominees for committee members and alternates. In the event a person is engaged in producing or

handling potatoes in more than one district, such person shall elect the district within which he may participate, as aforesaid, in designating nominees. An eligible voter's privilege of casting only one vote, as aforesaid, shall be construed to permit a voter to cast one vote for each position to be filled in the district in which he elects to vote.

§ 945.26 Failure to nominate.

If nominations are not made within the time and in the manner specified by the Secretary pursuant to § 945.25, the Secretary may, without regard to nominations, select the committee members and alternates on the basis of the representation prescribed in this subpart.

§ 945.27 Acceptance.

Any person selected by the Secretary as a committee member or as an alternate shall qualify by filing a written acceptance with the Secretary within ten days after being notified of such selection.

§ 945.28 Vacancies.

To fill any vacancy occasioned by the failure of any person selected as a committee member or as an alternate to qualify, or in the event of the death, removal, resignation, or disqualification of any qualified member or alternate, a successor for his unexpired term may be selected by the Secretary from nominations made in the manner specified in § 945.25 or the Secretary may select such committee member or alternate from previously unselected nominees on the current nominee list from the district involved. If the names of nominees to fill any such vacancy are not made available to the Secretary within 30 days after such vacancy occurs, the Secretary may fill such vacancy without regard to nominations, which selection shall be made on the basis of the representation provided for in § 945.24.

§ 945.29 Alternate members.

An alternate member of the committee shall act in the place and stead of the member for whom he is an alternate during such member's absence and may perform such other duties as may be assigned or requested by the committee. In the event of the death, removal, resignation, or disqualification of a member his alternate shall act for him until a successor to such member is selected and has qualified. The committee may request the attendance of one or more alternates at any or all meetings, notwithstanding the expected or actual presence of the respective members.

§ 945.30 Procedure.

(a) Five of the members of the committee shall be necessary to constitute a quorum; and at least five concurring votes shall be required to pass any motion or approve any committee action. At any assembled meeting, all votes shall be cast in person.

(b) The committee may provide for meetings by telephone, telegraph or other means of communication and any vote cast at such meeting shall be confirmed promptly in writing.

§ 945.31 Expenses and compensation.

Committee members and their respective alternates shall be reimbursed for reasonable expenses necessarily incurred by them in the performance of their duties and in the exercise of their powers under this subpart, and may receive compensation at a rate, to be determined by the committee and approved by the Secretary, not to exceed $10 for each day, or portion thereof, spent in attending to committee business.

§ 945.32 Powers.

The committee shall have the following powers:

(a) To administer the provisions of this subpart in accordance with its terms;

(b) To make rules and regulations to effectuate the terms and provisions of this subpart;

(c) To receive, investigate, and report to the Secretary complaints of violation of the provisions of this subpart; and

(d) To recommend to the Secretary amendments to this subpart.

§ 945.33 Duties.

It shall be the duty of the committee:

(a) To act as intermediary between the Secretary and any producer or handler;

(b) To select a chairman and such other officers as may be necessary, to select subcommittees of committee members, and to adopt such rules and regulations for the conduct of its business as it may deem advisable;

(c) To appoint such employees, agents, and representatives as it may deem necessary and to determine the salaries and define the duties of each such person;

(d) To investigate, from time to time, and to assemble data on the growing, harvesting, shipping and marketing conditions with respect to potatoes, and to engage in such research and service activities which relate to the handling or marketing of potatoes as may be approved by the Secretary;

(e) To furnish to the Secretary such available information as he may request;

(f) To keep minutes, books, and records which clearly reflect all of the acts and transactions of the committee and such minutes, books, and records shall be subject to examination at any time by the Secretary or his authorized agent or representative;

(g) To make available to producers and handlers the committee voting record on recommended regulations and on other matters of policy;

(h) At the beginning of each fiscal period to submit to the Secretary a budget of its expenses for such fiscal period, together with a report thereon;

(i) To cause the books of the committee to be audited by a competent accountant at least once each fiscal period, and at such other time as the committee may deem necessary or as the Secretary may request. The report of such audit shall show the receipt and expenditure of funds collected pursuant to this subpart; a copy of each such report shall be furnished to the Secretary and a copy of each such report shall be made available at the principal office of the committee for inspection by producers and handlers; and

(j) To consult, cooperate and exchange information when deemed desirable by the committee with other potato marketing committees and other individuals or agencies in connection with all proper committee activities and objectives under this subpart.

BUDGET, EXPENSES AND ASSESSMENTS

§ 945.40 Expenses.

The committee is authorized to incur such expenses as the Secretary may find are reasonable and likely to be incurred during each fiscal period for its maintenance and functioning, and for such purposes as the Secretary, pursuant to this subpart, determines to be appropriate. Handlers shall share such expenses upon the basis of a fiscal period. Each handler's share of such expense shall be proportionate to the ratio between the total quantity of potatoes handled by him as the first handler thereof during a fiscal period and the total quantity of potatoes handled by all handlers as first handlers thereof during the same period.

§ 945.41 Budget.

At the beginning of each fiscal period, and as may be necessary thereafter, the committee shall prepare an estimated budget of income and expenditures necessary for the administration of this part. The committee may recommend a rate of assessment calculated to provide adequate funds to defray its proposed expenses as authorized in § 945.40. The committee shall present such budget promptly to the Secretary with an accompanying report showing the basis for its calculations.

§ 945.42 Assessments.

(a) The funds to cover the committee's expenses pursuant to § 945.40 shall be acquired by the levying of assessments upon handlers as provided in this subpart. Each handler who ships potatoes as the first handler thereof shall pay assessments to the committee upon demand, which assessments shall be in payment of such

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handler's pro rata share of such expenses.

(b) Assessments shall be levied upon handlers at rates established by the Secretary, but not to exceed $1.00 per carload, or equivalent quantity. Such rates may be established upon the basis of the committee's recommendations or other available information.

(c) At any time during or subsequent to a given fiscal period, the committee may recommend the approval of an amended budget and an increase in the rate of assessment. Upon the basis of such recommendation, or other available information, the Secretary may approve an amended budget and increase the rate of assessment. Such increase shall be applicable to all potatoes assessable under this part and handled by the first handler thereof during such fiscal period.

§ 945.43 Accounting.

(a) All funds received by the committee pursuant to the provisions of this part shall be used solely for the purposes specified in this part.

(b) The Secretary may at any time require the committee, its members and alternates, employees, agents, and all other persons to account for all receipts and disbursements, funds, property, and records for which they are responsible. Whenever any person ceases to be a member or alternate of the committee, he shall account for all receipts, disbursements, funds, and property (including but not limited to books and other records) pertaining to the committee's activities for which he is responsible, and deliver all such property and funds in his hands to such successor, agency, or person as may be designated by the Secretary, and shall execute such assignments and other instruments as may be necessary or appropriate to vest in such successor, agency, or designated person, the right to all of such property and funds and all claims vested in such person.

(c) The committee may make recommendations to the Secretary for one or more of the members thereof, or any other person or persons to act as trustee or trustees for holding records, funds, or any other committee property during periods of suspension of this part, or during any period or periods when regulations are not in effect and, if the Secretary determines such action appropriate, he may direct that such person or persons shall act as trustee or trustees for the committee.

§ 945.44 Refunds.

At the end of each fiscal period funds arising from the excess of assessments collected over expenses shall be accounted for as follows:

(a) Except as provided in paragraph (b) of this section, each handler entitled to a proportionate refund of such excess assessments at the end of a fiscal period shall be credited with such refund against the operations of the following fiscal period unless he demands payment thereof, in which event such proportionate refund shall be paid to him; or

(b) The Secretary, upon recommendation of the committee, may determine that it is appropriate for the maintenance and functioning of the committee that the funds remaining at the end of a fiscal period which are in excess of the expenses necessary for committee operations during such period may be carried over into following periods as a reserve. Such reserve may be established at an amount not to exceed approximately one-half of an average fiscal period's operational expenses; and such reserve may be used to cover the necessary expenses of liquidation, in the event of termination of this part, and to cover the expenses incurred for the maintenance and functioning of the committee during any fiscal period when there is a crop failure, or during any period of suspension of any or all of the provisions of this part.

(c) Upon termination of this part, any funds not required to defray the necessary expenses of liquidation shall be disposed of in such manner as the Secretary may determine to be appropriate. To the extent practical, such funds shall be returned pro rata to the persons from whom such funds were collected.

Regulations

§ 945.50 Marketing policy.

(a) *Preparation.* Prior to or at the same time as recommendations are made pursuant to § 945.51, the committee shall consider, and prepare, a proposed policy for the marketing of potatoes. In developing its marketing policy the committee shall investigate relevant supply and demand conditions for potatoes. In such investigations the committee shall give appropriate consideration to the following:

(1) Market prices for potatoes, including prices by grade, size, and quality, in different packs, and in different containers;

(2) Supplies of potatoes by grade, size, and quality in the production area and in other potato producing areas;

(3) The trend and level of consumer income;

(4) Establishing and maintaining orderly marketing conditions for potatoes;

(5) Orderly marketing of potatoes as will be in the public interest; and

(6) Other relevant factors.

(b) *Reports.* (1) The committee shall promptly submit a report to the Secretary setting forth the aforesaid marketing policy and shall notify producers and handlers of the contents of such report.

(2) In the event it becomes advisable to deviate from such marketing policy because of changed supply and demand conditions, the committee shall formulate a new or revised marketing policy in the manner set forth in this section. The committee shall promptly submit a report thereon to the Secretary and notify producers and handlers of the contents of such report on the new or revised marketing policy.

§ 945.51 Recommendation for regulations.

Whenever the committee deems it advisable that the handling of potatoes be regulated pursuant to § 945.52, or § 945.53, or both, it shall recommend to the Secretary grade, size, quality, or maturity regulation, or any combination thereof, or amendment thereto, or modification, suspension, or termination thereof, whenever it finds that such regulation, as provided in such sections, will tend to effectuate the declared policy of the act.

§ 945.52 Issuance of regulations.

(a) The Secretary shall limit the handling of potatoes whenever he finds from the recommendations and information submitted by the committee, or from other available information, that such regulation will tend to effectuate the declared policy of the act. Such limitation may:

(1) Regulate in any or all portions of the production area, the handling of particular grades, sizes, qualities, or maturities, or any combination thereof, of any or all varieties of potatoes during any period; or

(2) Regulate the shipment of particular grades, sizes, qualities, or maturities of potatoes differently, for different varieties, for different portions of the production area, for different packs, for different containers, or for any combination of the foregoing, during any period; or

(3) Fix the size, capacity, weight, dimensions, or pack of the container, or containers, which may be used in the packaging or handling of potatoes, or both; or

(4) Regulate the shipment of potatoes by establishing, in terms of grades, sizes, or both, minimum standards of quality and maturity.

§ 945.53 Shipments for specified purposes.

Whenever the Secretary finds, upon the basis of the recommendations and information submitted by the committee, or from other available information, that it will tend to effectuate the declared policy of the act, he shall modify, suspend, or terminate regulations under or pursuant to § 945.42, § 945.52, or § 945.65, or any combination thereof in order to facilitate shipments of potatoes for the following purposes:

(a) Export;

(b) Relief or charity;

(c) Livestock feed;

(d) Certified seed potatoes;

(e) Processing into specified products; and

(f) Such other purposes which may be specified by the Committee, with the approval of the Secretary.

§ 945.54 Minimum quantity exemption.

The committee, with the approval of the Secretary, may establish, for any or all portions of the production area, minimum quantities below which shipments will be free from regulations issued or in effect pursuant to §§ 945.40 to 945.65, inclusive, or any combination thereof.

§ 945.55 Notification of regulation.

The Secretary shall notify the committee of any regulations issued or of any modifications, suspension, or termination thereof. The committee shall give reasonable notice thereof to handlers.

§ 945.56 Safeguards.

(a) The committee, with the approval of the Secretary, may prescribe adequate safeguards to prevent shipments pursuant to § 945.53 from entering channels of trade and other outlets for other than the specific purpose authorized therefor.

(b) Safeguards, provided by this section, may include, but shall not be limited to, requirements that handlers:

(1) Shall obtain the inspection required by § 945.65 or pay the assessment provided by § 945.42, or both, in connection with the potato shipments effected in accordance with § 945.53; and

(2) Shall obtain Certificates of Privilege from the committee for shipments of potatoes effected or to be effected under provisions of § 945.53.

(c) The committee, with the approval of the Secretary, shall prescribe rules governing the issuance and the contents of Certificates of Privilege.

(d) The committee may rescind, or deny to any handler, Certificates of Privilege if proof satisfactory to the committee is obtained that potatoes shipped by him for the purposes stated in § 945.53 were handled contrary to the provisions of this section.

(e) The committee shall make reports to the Secretary, as requested, showing the number of applications for such certificates, the quantity of potatoes covered by such applications for such certificates, the number of such applications denied and certificates granted, the quantity of potatoes shipped under duly issued certificates, and such other information as may be requested by the Secretary.

INSPECTION AND CERTIFICATION

§ 945.65 Inspection and certification.

(a) During any period in which regulations are in effect pursuant to § 945.42, § 945.52, or § 945.53, or any combination thereof, no handler shall handle potatoes unless such potatoes are inspected by an authorized representative of the Federal-State Inspection Service, and are covered by a valid inspection certificate, except when relieved from such requirements pursuant to recommendations by the committee and approved by the Secretary.

(b) Regrading, resorting, or repacking any lot of potatoes shall invalidate any prior inspection certificates covering such potatoes insofar as the requirements of this section are concerned. During any period in which shipments of potatoes are regulated, as aforesaid, no handler shall handle potatoes after they have been regraded, resorted, repacked, or in any way further prepared for market, unless such potatoes are inspected and covered by a valid inspection certificate as required in paragraph (a) of this section.

(c) Insofar as the requirements of this section are concerned, the length of time for which an inspection certificate shall be valid may be established by the committee with the approval of the Secretary; and such length of time may be different for shipments for different purposes.

(d) When potatoes are inspected in accordance with the requirements of this section, a copy of each inspection certificate issued shall be made available promptly to the committee by the inspection service.

COMPLIANCE

§ 945.70 Compliance.

Except as provided in this part, no handler shall ship potatoes, the shipment of which has been prohibited by the Secretary in accordance with pro-

visions of this subpart, and no handler shall ship potatoes except in conformity to the provisions of this subpart.

MISCELLANEOUS PROVISIONS

§ 945.80 Reports.

Upon the request of the committee, with approval of the Secretary, every handler shall furnish to the committee, in such manner and at such time as may be prescribed, such information as will enable the committee to exercise its powers and perform its duties under this subpart. The Secretary shall have the right to modify, change, or rescind any requests for reports pursuant to this section.

§ 945.81 Right of the Secretary.

The members of the committee (including successors and alternates), and any agent or employee appointed or employed by the committee, shall be subject to removal or suspension by the Secretary at any time. Each and every order, regulation, decision, determination or other act of the committee shall be subject to the continuing right of the Secretary to disapprove of the same at any time. Upon such disapproval, the disapproved action of the said committee shall be deemed null and void, except as to acts done in reliance thereon or in compliance therewith prior to such disapproval by the Secretary.

§ 945.82 Effective time.

The provisions of this subpart shall become effective at such time as the Secretary may declare above his signature attached to this subpart, and shall continue in force until terminated in one of the ways specified in this subpart.

§ 945.83 Termination.

(a) The Secretary may, at any time, terminate the provision of this subpart by giving at least one day's notice by means of a press release or in any other manner which he may determine.

(b) The Secretary may terminate or suspend the operation of any or all of the provisions of this subpart whenever he finds that such provisions do not tend to effectuate the declared policy of the act.

(c) The Secretary shall terminate the provisions of this subpart at the end of any fiscal period whenever he finds that such termination is favored by a majority of producers who, during the preceding fiscal period, have been engaged in the production for market of potatoes: *Provided,* That such majority has, during such period, produced for market more than fifty percent of the volume of such potatoes produced for market; but such termination shall be effective only if announced on or before April 30 of the then current fiscal period.

(d) The provisions of this subpart shall, in any event, terminate whenever the provisions of the act authorizing them cease to be in effect.

§ 945.84 Proceedings after termination.

(a) Upon the termination of the provisions of this subpart the then functioning members of the committee shall continue as trustees, for the purpose of liquidating the affairs of the committee, of all the funds and property then in the possession of or under control of the committee, including claims for any funds unpaid or property not delivered at the time of such termination. Action by said trusteeship shall require the concurrence of a majority of the said trustees.

(b) The said trustees shall continue in such capacity until discharged by the Secretary; shall, from time to time account for all receipts and disbursements and deliver all property on hand, together with all books and records of the committee and of the trustees, to such person as the Secretary may direct; and shall upon request of the Secretary execute such assignments or other instruments necessary or appropriate to vest in such person full title and right to all of the funds, property, and claims vested in the committee or the trustees pursuant thereto.

(c) Any person to whom funds, property, or claims have been transferred or delivered by the committee or its members, pursuant to this section, shall be subject to the same obligations imposed upon the members of

the committee and upon the said trustees.

§ 945.85 Effect of termination or amendments.

(a) Unless otherwise expressly provided by the Secretary, the termination of this subpart or of any regulation issued pursuant to this subpart, or the issuance of any amendments to either thereof, shall not (1) affect or waive any right, duty, obligation, or liability which shall have arisen or which may thereafter arise in connection with any provision of this subpart or any regulation issued under this subpart, or (2) release or extinguish any violation of this subpart or of any regulation issued under this subpart, or (3) affect or impair any rights or remedies of the Secretary or of any other person with respect to any such violation.

(b) The persons who are committee members and alternates on the effective date of this subpart shall continue in office until their successors have been selected and have qualified. All rules and regulations issued or approved by the Secretary pursuant to this part (Order No. 945, as amended) and not in conflict herewith, which are in effect immediately prior to the date of this amendment shall continue in effect under this subpart as originally issued, or subsequently modified, until such rules and regulations are changed, modified, or suspended in accordance with this subpart.

§ 945.86 Duration of immunities.

The benefits, privileges, and immunities conferred upon any person by virtue of this subpart shall cease upon the termination of this subpart, except with respect to acts done under and during the existence of this subpart.

§ 945.87 Agents.

The Secretary may, by designation in writing, name any person, including any officer or employee of the Government, or name any bureau or division in the United States Department of Agriculture, to act as his agent or representative in connection with any of the provisions of this subpart.

§ 945.88 Derogation.

Nothing contained in this subpart is, or shall be construed to be, in derogation or in modification of the rights of the Secretary or of the United States to exercise any powers, granted by the act or otherwise, or, in accordance with such powers, to act in the premises whenever such action is deemed advisable.

§ 945.89 Personal liability.

No member or alternate of the committee, nor any employee or agent thereof, shall be held personally responsible, either individually or jointly with others, in any way whatsoever, to any handler or to any person for errors in judgment, mistakes, or other acts, either of commission or omission, as such member, alternate, or employee, except for acts of dishonesty.

§ 945.90 Separability.

If any provision of this subpart is declared invalid, or the applicability thereof to any person, circumstance, or thing is held invalid, the validity of the remainder of this subpart, or the applicability thereof to any other person, circumstance, or thing, shall not be affected thereby.

§ 945.91 Amendments.

Amendments to this subpart may be proposed, from time to time, by the committee or by the Secretary.

Subpart—Rules and Regulations

SOURCE: 24 FR 8688, Oct. 27, 1959, unless otherwise noted. Redesignated at 26 FR 12751, Dec. 30, 1961.

§ 945.100 Communications.

Unless otherwise provided by specific direction of the committee, all reports, applications, submittals, requests, and communications in connection with the marketing agreement and order, both as amended, shall be addressed to the committee at its principal office.

DEFINITIONS

§ 945.110 Order.

"Order" means Order No. 945, as amended, effective September 1, 1958 (§§ 945.1-945.91) regulating the handling of Irish potatoes grown in Malheur County, Oregon, and the counties of Adams, Valley, Lemhi, Clark, and Fremont in the State of Idaho, and all of the counties in Idaho lying south thereof.

§ 945.111 Fiscal period.

The fiscal period that began June 1, 1981, shall end July 31, 1982. Each year thereafter "fiscal period" shall mean the period beginning August 1 and ending the following July 31.

[47 FR 17272, Apr. 22, 1982]

§ 945.112 Terms.

Terms used in this subpart shall have the same meaning as when used in the marketing agreement and order, both as amended.

CERTIFICATES OF PRIVILEGE

§ 945.120 General.

Whenever shipments of potatoes for special purposes pursuant to § 945.53 are relieved in whole or in part from grade and size regulations issued under § 945.52 the committee shall require information and evidence as to the manner, methods, and timing of such shipments as safeguards against the entry of any such potatoes into trade channels other than those for which intended. Such information and evidence shall include the requirements set forth below with respect to Certificates of Privilege.

§ 945.121 Qualification.

Before handling potatoes for special purposes which do not meet regulations issued pursuant to § 945.52 a handler must qualify with the committee to handle shipments for special purposes. To qualify he must (a) apply for and receive a Certificate of Privilege indicating his intent to so handle potatoes; (b) agree to comply with reporting and other requirements set forth in §§ 945.121 to 945.125, inclusive, with respect to such shipments; and (c) receive approval of the committee, or its duly authorized agents, to so handle potatoes. Such approval will be based upon evidence furnished in his application for a Certificate of Privilege, and other information available to the committee.

§ 945.122 Application.

(a) Application for a Certificate of Privilege shall be made on forms furnished by the committee. Each application may contain, but need not be limited to, the name and address of the handler; the quantity by grade, size, quality and variety of the potatoes to be shipped; the mode of transportation; the consignee; the destination; the purpose for which the potatoes are to be used; a certification to the United States Department of Agriculture and to the committee as to the truthfulness of the information shown thereon; and any other appropriate information or documents deemed necessary by the committee or its duly authorized agents for the purpose stated in § 945.120.

(b) The committee may require each handler making shipments of potatoes for export to include with his application a copy of the Department of Commerce Shipper's Export Declaration Form No. 7525-V applicable to such shipment.

§ 945.123 Approval.

The committee or its duly authorized agents shall give prompt consideration to each application for a Certificate of Privilege. Approval of an application, based upon a determination as to whether the information contained therein and other information available to the committee supports approval, shall be evidenced by the issuance of a Certificate of Privilege to the applicant. Each certificate shall cover a specified period, and specified qualities and quantities of potatoes to be sold or transported to the designated consignee for the purposes declared.

§ 945.124 Reports.

Each handler of potatoes shipping under Certificates of Privilege shall supply the committee with reports as

requested by the committee or its duly authorized agents showing the name and address of the shipper; the car or truck identification; the loading point; destination; consignee; the inspection certificate number when inspection is required; and any other information deemed necessary by the committee.

§ 945.125 Disqualification.

The committee from time to time may conduct surveys of handling of potatoes for special purposes requiring Certificates of Privilege to determine whether handlers are complying with the requirements and regulations applicable to such certificates. Whenever the committee finds that a handler or consignee is failing to comply with requirements and regulations applicable to handling of potatoes in special outlets, and requiring such certificates, a Certificate or Certificates of Privilege issued such handler may be rescinded and further certificates denied. Such disqualification shall apply to, and not exceed, a reasonable period of time as determined by the committee but in no event shall it extend beyond the end of the succeeding fiscal period. Any handler who has a certificate rescinded or denied may appeal to the committee in writing for reconsideration of his disqualification.

§ 945.130 Reestablishment of districts and reapportionment of committee membership.

(a) Pursuant to § 945.23: (1) The following new districts are established;

(i) District No. 1, the counties of Bonneville, Butte, Clark, Freemont, Jefferson, Madison, and Teton;

(ii) District No. 2, the counties of Bannock, Bear Lake, Bingham, Caribou, Franklin, Oneide, and Power; and

(iii) District No. 3, Malheur County, Oreg., and the remaining designated counties in Idaho included in the production area, and not included in District No. 1 or District No. 2.

(2) The membership of the Idaho-Eastern Oregon Potato Committee shall be apportioned among the districts of the production area so as to provide the following representation;

(i) Three producer members and one handler member from District No. 1;

(ii) One producer member and one handler member from District No. 2; and

(iii) One producer member and one handler member from District No. 3.

The respective alternates shall be selected on the same basis of representation as the members.

(b) The new districts are hereby established in the current fiscal year only for the purpose of making nominations of committee members for the coming fiscal year. The new districts are to be established as operating entities beginning on June 1, 1972.

(c) Terms used in this section have the same meaning as when used in said marketing agreement and this part.

[37 FR 5007, Mar. 9, 1972]

NOTE: After January 1, 1979, "Budget of Expenses and Rate of Assessment" regulations (e.g. sections .200 through .299) and "Handling" regulations (e.g. sections .300 through .399) which are in effect for a year or less, will not be carried in the Code of Federal Regulations. For Federal Register citations affecting these regulations, see the "List of CFR Sections Affected" in this volume.

PART 946—IRISH POTATOES GROWN IN WASHINGTON

Subpart—Order Regulating Handling

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946.140 Handling potatoes for commercial processing into products.
946.142 Operating reserve.

AUTHORITY: Secs. 1-19, 48 Stat. 31, as amended; 7 U.S.C. 601-674.

Subpart—Order Regulating Handling

SOURCE: 17 FR 2912, Apr. 4, 1952, unless otherwise noted. Redesignated at 26 FR 12751, Dec. 30, 1961.

DEFINITIONS

§ 946.1 Secretary.

"Secretary" means the Secretary of Agriculture of the United States, or any other officer, or member of the United States Department of Agriculture, who is, or may hereafter be authorized to exercise the powers and to perform the duties of the Secretary of Agriculture.

§ 946.2 Act.

"Act" means Public Act No. 10, 73d Congress, as amended and reenacted and amended by the Agricultural Marketing Agreement Act of 1937, as amended (48 Stat. 31, as amended; 7 U.S.C. 601 et seq.).

§ 946.3 Person.

"Person" means an individual, partnership, corporation, association, legal representative, or any organized group or business unit.

§ 946.4 Production area.

"Production area" means all territory included within the boundaries of the State of Washington.

§ 946.5 Potatoes.

"Potatoes" means all varieties of Irish potatoes grown within the State of Washington.

§ 946.6 Handler.

"Handler" is synonymous with "shipper" and means any person (except a common or contract carrier

of potatoes owned by another person) who handles potatoes or causes potatoes to be handled.

[37 FR 10916, June 1, 1972]

§ 946.7 Handle.

"Handle" is synonymous with "ship" and means to transport, sell, or in any other way to place potatoes grown in the State of Washington, or cause such potatoes to be placed, in the current of commerce within the production area or between the production area and any point outside thereof, or from any point in the adjoining States of Oregon and Idaho to any other point: *Provided*, That, the definition of "handle" shall not include the transportation of ungraded potatoes within the production area for the purpose of having such potatoes prepared for market, or stored, except that the committee may impose safeguards pursuant to § 946.55 with respect to such potatoes.

[37 FR 10916, June 1, 1972]

§ 946.8 Producer.

"Producer" means any person engaged in the production of potatoes for market.

§ 946.9 Fiscal period.

"Fiscal period" means the period beginning on July 1 of each year and ending June 30 of the following year, or such other period as the Secretary may establish pursuant to recommendation of the committee.

[37 FR 10916, June 1, 1972]

§ 946.10 Committee.

"Committee" means the administrative committee, called the State of Washington Potato Committee, established pursuant to § 946.22.

§ 946.11 Varieties.

"Varieties" means and includes all classifications or subdivisions of Irish potatoes according to those definitive characteristics now or hereafter recognized by the United States Department of Agriculture.

§ 946.12 Seed potatoes.

"Seed potatoes" means and includes all potatoes officially certified and tagged, marked or otherwise appropriately identified under the supervision of the official seed potato certifying agency of the State of Washington or other seed certification agencies which the Secretary may recognize.

§ 946.13 Grade and size.

"Grade" means any one of the officially established grades of potatoes, and "size" means any one of the officially established sizes of potatoes as defined and set forth in:

(a) The U.S. Standards for Potatoes issued by the U.S. Department of Agriculture (§§ 51.1540 to 51.1566 of this title), or amendments thereto or modifications thereof, or variations based thereon;

(b) U.S. Standards for Grades of Potatoes for Processing as issued by the U.S. Department of Agriculture (§§ 51.3410 to 51.3424 of this title), or amendments thereto, or modifications thereof, or variations based thereon;

(c) U.S. Standards for Grades of Peeled Potatoes (§§ 52.2421 to 52.2433 of this title), or amendments thereto or modifications thereof, or variations based thereon; and

(d) State of Washington Standards for Potatoes issued by the State of Washington Director of Agriculture, or amendments thereto, or modifications thereof, or variations based thereon.

[37 FR 10916, June 1, 1972]

§ 946.14 Grading.

"Grading" is synonymous with "preparing for market" which means the sorting or separating of potatoes into grades and sizes for market purposes.

[37 FR 10916, June 1, 1972]

§ 946.15 Export.

"Export" means shipment of potatoes beyond the boundaries of the 48 contiguous States of the United States, or the District of Columbia.

[37 FR 10916, June 1, 1972]

§ 946.16 District.

"District" means each one of the geographical divisions of the production area established pursuant to § 946.31.

[17 FR 2912, Apr. 4, 1952. Redesignated at 26 FR 12751, Dec. 30, 1961, and 37 FR 10916, June 1, 1972]

ADMINISTRATIVE COMMITTEE

§ 946.22 Establishment and membership.

The State of Washington Potato Committee consisting of fifteen members, of whom ten shall be producers and five shall be handlers, is hereby established. For each member of the committee there shall be an alternate who shall have the same qualifications as the member.

§ 946.23 Alternate members.

An alternate member of the committee shall act in the place and stead of the member for whom he is an alternate, during such member's absence. In the event of the death, removal, resignation, or disqualification of a member, his alternate shall act for him until a successor of such member is selected and has qualified.

§ 946.24 Procedure.

(a) Nine members of the committee shall be necessary to constitute a quorum and nine concurring votes will be required to pass any motion or approve any committee action.

(b) The committee may provide for meetings by telephone, telegraph, or other means of communication and any vote cast at such a meeting shall be confirmed promptly in writing: *Provided,* That if any assembled meeting is held, all votes shall be cast in person.

§ 946.25 Selection.

(a) Persons selected as committee members or alternates to represent producers shall be individuals who are producers in the respective district for which selected, or officers or employees of a corporate producer in such district.

(b) Persons selected as committee members or alternates to represent handlers shall be individuals who are handlers in the State of Washington, or officers or employees of a corporate handler in the aforesaid State, and such persons shall be residents of the State of Washington.

(c) The Secretary shall select committee membership so that, during each fiscal period, each district, as designated in § 946.31, will be represented by two producer members and one handler member, with their respective alternates: *Provided,* That one producer member of the committee from District No. 5, with his respective alternate, shall be a certified seed producer.

[17 FR 2912, Apr. 4, 1952. Redesignated at 26 FR 12751, Dec. 30, 1961, and amended at 37 FR 10916, June 1, 1972]

§ 946.26 Acceptance.

Any person selected by the Secretary as a committee member or as an alternate shall qualify by filing a written acceptance with the Secretary within ten days after being notified of such selection.

§ 946.27 Term of office.

(a) The term of office of committee members and alternates shall be for 3 years beginning on the 1st day of July and continuing until their successors are selected and have qualified: *Provided, however,* That the terms of office of the initial committee under the amended order shall be determined by the Secretary so that the terms of office of one-third of the initial members and alternates shall be for 1 year, one-third for 2 years, and one-third for 3 years.

(b) Committee members and alternates shall serve during the term of office for which they are selected and have qualified, or during that portion thereof beginning on the date on which they qualify during the term of office and continuing until the end thereof, and until their successors are selected and have qualified.

[17 FR 2912, Apr. 4, 1952. Redesignated at 26 FR 12751, Dec. 30, 1961, and amended at 37 FR 10916, June 1, 1972]

§ 946.28 Powers.

The committee shall have the following powers:

(a) To administer the provisions of this subpart in accordance with its terms;

(b) To make rules and regulations to effectuate the terms and provisions of this subpart;

(c) To receive, investigate, and report to the Secretary complaints of violation of the provisions of this subpart; and

(d) To recommend to the Secretary amendments to this subpart.

§ 946.29 Duties.

It shall be the duty of the committee:

(a) At the beginning of each fiscal year, to meet and organize, to select a chairman and such other officers as may be necessary, to select subcommittees of committee members, and to adopt such rules and regulations for the conduct of its business as it may deem advisable;

(b) To act as intermediary between the Secretary and any producer or handler;

(c) To furnish to the Secretary such available information as he may request;

(d) To appoint such employees, agents, and representatives as it may deem necessary and to determine the salaries and define the duties of each such person;

(e) To investigate, from time to time, and to assemble data on the growing, harvesting, shipping, and marketing conditions with respect to potatoes, and to engage in such research and service activities which relate to the handling or marketing of potatoes as may be approved by the Secretary;

(f) To keep minutes, books, and records which clearly reflect all of the acts and transactions of the committee and such minutes, books, and records shall be subject to examination at any time by the Secretary or his authorized agent or representative;

(g) To make available to producers and handlers the committee voting record on recommended regulations and on other matters of policy;

(h) At the beginning of each fiscal year, to submit to the Secretary a budget of its expenses for such fiscal year, together with a report thereon;

(i) To cause the books of the committee to be audited by a competent accountant at least once each fiscal year, and at such other time as the committee may deem necessary or as the Secretary may request. The report of such audit shall show the receipt and expenditure of funds collected pursuant to this subpart; a copy of each such report shall be furnished to the Secretary and a copy of each such report shall be made available at the principal office of the committee for inspection by producers and handlers; and

(j) To consult, cooperate, and exchange information with the other potato marketing committees and other individuals or agencies in connection with all proper committee activities and objectives under this subpart.

§ 946.30 Expenses and compensation.

Committee members and their respective alternates when acting on committee business shall be reimbursed for reasonable expenses necessarily incurred by them in the performance of their duties and in the exercise of their powers under this subpart. In addition, they may receive reasonable compensation at a rate recommended by the committee and approved by the Secretary.

[37 FR 10916, June 1, 1972]

§ 946.31 Districts.

(a) For the purpose of determining the basis for selecting committee members, the following districts of the production area are hereby initially established:

District No. 1. The counties of Chelan, Okanogan, Grant, Douglas, Ferry, Stevens, Pend Oreille, Spokane, Lincoln, and Adams;

District No. 2. Kittitas County;

District No. 3. The counties of Yakima and Klickitat;

District No. 4. The counties of Benton, Franklin, Walla Walla, Columbia, Garfield, Asotin, and Whitman; and

District No. 5. All of the remaining counties in the State of Washington, not included in Districts 1, 2, 3, and 4 of this paragraph.

(b) The Secretary, upon the recommendation of the committee, may re-

establish districts within the production area and may reapportion committee membership among the various districts: *Provided,* That in recommending any such changes in districts or representation, the committee shall give consideration to: (1) The relative importance of new areas of production; (2) changes in the relative position, with respect to production of existing districts; (3) the geographic location of production areas as it would affect the efficiency of administering the marketing agreement and order; and (4) other relevant factors: *Provided further,* That there shall be no change in the total number of committee members or in the total number of districts.

§ 946.32 Nomination.

The Secretary may select the members of the State of Washington Potato Committee and their respective alternates from nominations which may be made in the following manner, or from among such other qualified persons:

(a) A meeting or meetings of producers and handlers shall be held by the committee in each district for which nominees are to be selected not later than May 1 of each year to designate nominees for members and alternates to the committee; or the committee may conduct nominations by mail in a manner recommended by the committee and approved by the Secretary; and, in arranging for such meetings, the committee may, if it deems desirable, utilize the services and facilities of other existing organizations;

(b) At least one nominee shall be designated for each position as member and for each position as alternate member on the committee which is vacant, or which is to become vacant the following July 1;

(c) The names of nominees shall be supplied to the Secretary in such manner and form as he may prescribe, not later than June 1 of each year, or by such other date as may be specified by the Secretary;

(d) Only producers may participate in designating producer nominees, and only handlers may participate in designating handler nominees. Any person who operates in more than one district or is engaged in producing and handling potatoes, shall elect the classification (i.e., producer or handler), and the district within which he desires to participate in designating nominees;

(e) Regardless of the number of districts in which a person produces or handles potatoes, each such person is entitled to cast only one vote on behalf of himself, his agents, subsidiaries, affiliates, and representatives in designating nominees for committee members and alternates. An eligible voter's privilege of casting only one vote as aforesaid shall be construed to permit a voter to cast one vote for each position to be filled in the district in which he elects to vote; and

(f) If nominations are not made within the time and in the manner specified in this section, the Secretary may, without regard to nominations, select the committee members and alternates on the basis of the representation provided for in this subpart.

[37 FR 10916, June 1, 1972]

§ 946.33 Vacancies.

To fill any vacancy occasioned by the failure of any person selected as a committee member or as an alternate to qualify, or in the event of the death, removal, resignation, or disqualification of any qualified member or alternate, a successor for his unexpired term may be selected by the Secretary from nominations made in the manner specified in § 946.32, or the Secretary may select such committee member or alternate from previously unselected nominees on the current nominee list from the district involved. If the names of nominees to fill any such vacancy are not made available to the Secretary within 30 days after such vacancy occurs, the Secretary may fill such vacancy without regard to nominations, which selection shall be made on the basis of the representation provided for in this subpart.

[17 FR 2912, Apr. 4, 1952. Redesignated at 26 FR 12751, Dec. 30, 1961 and 37 FR 10917, June 1, 1972]

EXPENSES AND ASSESSMENTS

§ 946.40 Expenses.

The committee is authorized to incur such expenses as the Secretary finds are reasonable and likely to be incurred by it during each fiscal period for its maintenance and functioning, and for such other purposes as the Secretary, pursuant to this subpart, determines to be appropriate. The committee shall submit to the Secretary a budget for each fiscal period, including an explanation of the items appearing therein, and a recommendation as to the rate of assessment for such fiscal period.

[37 FR 10917, June 1, 1972]

§ 946.41 Assessments.

Each handler shall pay to the committee upon demand, his pro rata share of the expenses authorized by the Secretary for each fiscal period. Each handler's pro rata share shall be the rate of assessment per hundredweight fixed by the Secretary times the quantity of potatoes which he handles as the first handler thereof. At any time during or after a fiscal period, the Secretary may increase the rate of assessment as necessary to cover authorized expenses. Such increase shall be applicable to all potatoes handled during the given fiscal period. The payment of expenses for the maintenance and functioning of the committee may be required during periods when no regulations are in effect. If a handler does not pay his assessment within the time prescribed by the committee, the assessment may be increased by a late payment charge or an interest charge, or both, at rates prescribed by the committee with the approval of the Secretary.

[37 FR 10917, June 1, 1972]

§ 946.42 Accounting.

(a) *Excess funds.* At the end of a fiscal period, funds in excess of the year's expenses shall be placed in an operating reserve not to exceed approximately two fiscal periods' operational expenses or such lower limits as the committee, with the approval of the Secretary, may establish. Funds in such reserve shall be available for use by the committee for expenses authorized pursuant to § 946.40. Funds in excess of those placed in the operating reserve shall be refunded to handlers. Each handler's share of such excess shall be the amount of assessments he paid in excess of his pro rata share of the actual expenses of the committee and the addition, if any, to the operating reserve.

(b) *Accounting of funds upon termination of order.* Any money collected as assessments pursuant to this subpart and remaining unexpended in the possession of the committee after termination of this part shall be distributed in such manner as the Secretary may direct: *Provided,* That to the extent practical, such funds shall be returned pro rata to the persons from whom such funds were collected.

[37 FR 10917, June 1, 1972]

§ 946.43 Funds.

All funds received by the committee pursuant to any provisions of this subpart shall be used solely for the purposes specified in this subpart and shall be accounted for in the following manner:

(a) The Secretary may at any time require the committee and its members to account for all receipts and disbursements; and

(b) Whenever any person ceases to be a committee member or alternate, he shall account for all receipts and disbursements and deliver all property and funds in his hands, together with all books and records in his possession, to his successor in office or to such person as the Secretary may designate, and shall execute such assignments and other instruments as may be necessary or appropriate to vest in such successor or in such designated person the right to all the property, funds, or claims vested in such member or alternate.

REGULATION

§ 946.50 Marketing policy.

(a) Prior to each marketing season, the committee shall consider and prepare a policy statement for the marketing of potatoes. In developing its marketing policy, the committee shall

investigate relevant supply and demand conditions for potatoes. In such investigations, the committee shall give appropriate considerations to the following:

(1) Market prices of potatoes, including prices by grade, size, quality, and maturity in different packs of fresh potatoes and of the various forms of processed potatoes;

(2) Supplies of potatoes by grade, size, quality, and maturity in the production area and in other production areas, of fresh potatoes, and the supplies of various forms of processed potatoes;

(3) The trend and level of consumer income;

(4) Establishing and maintaining orderly marketing conditions for potatoes;

(5) Orderly marketing of potatoes as will be in the public interest; and

(6) Other relevant factors.

(b) In the event it becomes advisable to deviate from such marketing policy because of changed supply and demand conditions, the committee shall formulate a revised marketing policy statement in accordance with the appropriate considerations in paragraph (a) of this section.

(c) The committee shall submit a report to the Secretary setting forth such marketing policy. Notice of each such marketing policy and any revision thereof shall be given to producers, handlers, and other interested parties by bulletins, newspapers, or other appropriate media, and copies thereof shall be available for examination at the committee office to all interested parties.

[37 FR 10917, June 1, 1972]

§ 946.51 Recommendation for regulations.

The committee shall recommend to the Secretary regulations, or amendments, modifications, suspension, or termination thereof, whenever it finds that such regulations as provided in § 946.52 are in accordance with the marketing policy established pursuant to § 946.50 and that such regulations will tend to effectuate the declared policy of the act.

[37 FR 10917, June 1, 1972]

§ 946.52 Issuance of regulations.

(a) The Secretary shall limit the shipment of potatoes as set forth in this subpart whenever he finds from the recommendation and information submitted by the committee, or from other available information, that it would tend to effectuate the declared policy of the act:

(1) To regulate, in any or all portions of the production area the handling of particular grades, sizes, qualities or maturity of any or all varieties of potatoes during any period;

(2) To regulate the handling of particular grades, sizes, qualities or maturities of any or all varieties of potatoes, or for any combination of the foregoing during any period in the States of Oregon and Idaho which have been shipped from the production area to specified locations therein for grading or storage pursuant to § 946.54;

(3) To regulate the handling of particular grades, sizes, qualities or maturities of any or all varieties differently for: Different portions of the production area, different uses or outlets, different packs or for any combination of the foregoing, during any period;

(4) To regulate the handling of potatoes by establishing in terms of grades, sizes, or both, minimum standards of quality and maturity.

(b) The Secretary may amend any regulation issued under this subpart whenever he finds that such amendment would tend to effectuate the declared policy of the act. The Secretary may also terminate or suspend any regulation whenever he finds that such regulation obstructs or no longer tends to effectuate the declared policy of the act.

(c) The Secretary shall notify the committee of any such regulation issued pursuant to this section and the committee shall give reasonable notice thereof to handlers.

[37 FR 10917, June 1, 1972]

§ 946.53 Minimum quantities.

The committee, with the approval of the Secretary, may establish, for any or all portions of the production area, minimum quantities below which ship-

ments will be free from regulations issued pursuant to this part.

[37 FR 10918, June 1, 1972]

§ 946.54 Shipments for specified purposes.

(a) Whenever the Secretary finds, upon the basis of the recommendations and information submitted by the committee, or from other available information, that it will tend to effectuate the declared policy of the act, he shall modify, suspend, or terminate any or all regulations issued pursuant to this part in order to facilitate shipments of potatoes for the following purposes:

(1) Livestock feed;
(2) Charity;
(3) Export;
(4) Seed;
(5) Prepeeling;
(6) Such other purposes as may be specified by the committee with the approval of the Secretary; and
(7) Grading or storing between the districts within the production area or to and within specified locations in the adjoining States of Idaho and Oregon.

(b) The Secretary shall give prompt notice to the committee of any modification, suspension, or termination of regulations pursuant to this section, or of any approval issued by him under the provisions of this section.

[37 FR 10918, June 1, 1972]

§ 946.55 Safeguards.

(a) The committee, with the approval of the Secretary, may prescribe adequate safeguards to prevent shipments pursuant to § 946.54 from entering channels of trade and other outlets for other than the specific purposes authorized therefor, and the transportation of potatoes for grading and storing to points outside the production area.

(b) Safeguards provided by this section may include, but shall not be limited to, requirements that handlers:

(1) Shall obtain the inspection required by § 946.60 or pay the assessment provided by § 946.41, or both, in connection with the potato shipments effected in accordance with § 946.54, and

(2) Shall obtain a special purpose certificate from the committee for shipments of potatoes effected or to be effected under provisions of § 946.54.

(c) The committee, with the approval of the Secretary, shall prescribe rules governing the issuance and the contents of the special purpose certificate.

(d) The committee may rescind, or deny to any handler the special purpose certificate if proof satisfactory to the committee is obtained that potatoes shipped by him for the purpose stated in § 946.54 were handled contrary to the provisions of this section.

(e) The committee shall make reports to the Secretary, as requested, showing the number of applications for such certificates, the quantity of potatoes covered by such applications for such certificates, the number of such applications denied, and certificates granted, the quantity of potatoes shipped under duly issued certificates, and such other information as may be requested by the Secretary.

[37 FR 10918, June 1, 1972]

Inspection and Certification

§ 946.60 Inspection and certification.

(a) During any period in which the Secretary regulates the shipment of potatoes pursuant to the provisions of this subpart, each handler who first ships potatoes shall, prior to making shipment, cause each shipment to be inspected by an authorized representative of the Federal-State inspection service or such other inspection service as the Secretary shall designate. The committee may, with the approval of the Secretary, prescribe rules and regulations modifying the inspection requirements of this section in circumstances under which such requirements would create an undue hardship on growers or shippers: *Provided,* That all such shipments shall comply with all regulations in effect: *And provided further,* That proper safeguards to assure compliance are adopted.

(b) Each such handler shall make arrangements with the inspecting agency to forward promptly to the committee a copy of such inspection certificate: *Provided, however,* That (1) each handler making shipments of

potatoes during such period shall prior to making such shipment, determine if such shipment has been inspected and if such shipment has not been so inspected and is not covered by an inspection certificate, each handler making such determinations shall have such potatoes inspected and shall arrange for a copy of the inspection certificate to be forwarded to the committee as aforesaid, and (2) each handler who first ships potatoes after such potatoes are regraded, resorted, or repacked, or in any other way further prepared for market shall have each shipment of such potatoes inspected as provided in this section.

[17 FR 2912, Apr. 14, 1952. Redesignated at 26 FR 12751, Dec. 30, 1961, and redesignated and amended at 37 FR 10918, June 1, 1972]

EFFECTIVE TIME AND TERMINATION

§ 946.62 Effective time.

The provisions of this subpart shall become effective at such time as the Secretary may declare above his signature attached to this subpart, and shall continue in force until terminated in one of the ways specified in this subpart.

§ 946.63 Termination.

(a) The Secretary may, at any time, terminate the provisions of this subpart by giving at least one day's notice by means of a press release or in any other manner which he may determine.

(b) The Secretary may terminate or suspend the operation of any or all of the provisions of this subpart whenever he finds that such provisions do not tend to effectuate the declared policy of the act.

(c) The Secretary shall terminate the provisions of this subpart at the end of any fiscal year whenever he finds that such termination is favored by a majority of producers who, during the preceding fiscal year, have been engaged in the production for market of potatoes: *Provided*, That such majority has during such year, produced for market more than fifty percent of the volume of such potatoes produced for market; but such termination shall be effective only if announced on or before May 31 of the then current fiscal year.

(d) The provisions of this subpart shall, in any event, terminate whenever the provisions of the act authorizing them cease to be in effect.

§ 946.64 Proceedings after termination.

(a) Upon the termination of the provisions of this subpart, the then functioning members of the committee shall continue as trustees, for the purpose of liquidating the affairs of the committee, of all the funds and property then in the possession of or under control of the committee, including claims for any funds unpaid or property not delivered at the time of such termination. Action by said trusteeship shall require the concurrence of a majority of the said trustees.

(b) The said trustee shall continue in such capacity until discharged by the Secretary; shall from time to time, account for all receipts and disbursements and deliver all property on hand, together with all books and records of the committee and of the trustees, to such person as the Secretary may direct; and shall upon request of the Secretary, execute such assignments or other instruments necessary or appropriate to vest in such person full title and right to all of the funds, property, and claims vested in the committee or the trustees pursuant thereto.

(c) Any person to whom funds, property, or claims have been transferred or delivered by the committee or its members, pursuant to this section, shall be subject to the same obligations imposed upon the members of the committee and upon the said trustees.

§ 946.65 Effect of termination or amendment.

Unless otherwise expressly provided by the Secretary the termination of this subpart or of any regulation issued pursuant to this subpart, or the issuance of any amendments to either thereof, shall not (a) affect or waive any right, duty, obligation, or liability which shall have arisen or which may thereafter arise in connection with any provisions of this subpart or any

regulation issued under this subpart, or (b) release or extinguish any violation of this subpart or of any regulation issued under this subpart, or (c) affect or impair any rights or remedies of the Secretary or of any other person with respect to any such violation.

Miscellaneous Provisions

§ 946.70 Reports and records.

(a) Upon the request of the committee, with the approval of the Secretary, every handler shall furnish to the committee in such manner and at such time as may be prescribed, such information as will enable the committee to exercise its duties under this subpart.

(b) Each handler shall establish and maintain for at least 2 succeeding years such records and documents with respect to potatoes received and potatoes disposed of by him as will substantiate the required reports.

(c) For the purpose of assuring compliance with the recordkeeping requirements and verifying reports filed by handlers, the Secretary and the committee through its duly authorized employees, shall have access to such records.

(d) All reports and records furnished or submitted by handlers to, or obtained by the employees of, the committee which contain data for information constituting a trade secret or disclosing the trade position, financial condition, or business operations of the particular handler from whom received, shall be treated as confidential, and the reports and all information obtained from records shall at all times be kept in the custody and under the control of one or more employees of the committee who shall disclose such information to no person other than the Secretary, or his authorized agents. Compilations of general reports from data and information submitted by handlers is authorized subject to the prohibition of disclosure of individual handlers' identity or operations.

[37 FR 10918, June 1, 1972]

§ 946.71 Compliance.

Except as provided in this subpart, no handler shall ship potatoes, the shipment of which has been prohibited by the Secretary in accordance with provisions of this subpart, and no handler shall ship potatoes except in conformity to the provisions of this subpart.

§ 946.72 Right of the Secretary.

The members of the committee (including successors and alternates), and any agent or employee appointed or employed by the committee, shall be subject to removal or suspension by the Secretary at any time. Each and every order, regulation, decision, determination or other act of the committee shall be subject to the continuing right of the Secretary to disapprove of the same at any time. Upon such disapproval the disapproved action of the said committee shall be deemed null and void, except as to acts done in reliance thereon or in compliance therewith prior to such disapproval by the Secretary.

§ 946.73 Duration of immunities.

The benefits, privileges, and immunities conferred upon any person by virtue of this subpart shall cease upon the termination of this subpart, except, with respect to acts done under and during the existence of this subpart.

§ 946.74 Agents.

The Secretary may, by designation in writing, name any person, including any officer or employee of the Government or name any bureau or division in the United States Department of Agriculture, to act as his agent or representative in connection with any of the provisions of this subpart.

§ 946.75 Derogation.

Nothing contained in this subpart is, or shall be construed to be, in derogation or in modification of the rights of the Secretary or of the United States to exercise any powers granted by the act or otherwise, or, in accordance with such powers, to act in the premises whenever such action is deemed advisable.

§ 946.76 Personal liability.

No member or alternate of the committee, nor any employee or agent thereof, shall be held personally responsible, either individually or jointly with others, in any way whatsoever, to any handler or to any person for errors in judgment, mistakes, or other acts, either of commission or omission, as such member, alternate, or employee, except for acts of dishonesty.

§ 946.77 Separability.

If any provision of this subpart is declared invalid, or the applicability thereof to any person, circumstance, or thing is held invalid, the validity of the remainder of this subpart, or the applicability thereof, to any other person, circumstance, or thing, shall not be affected thereby.

§ 946.78 Amendments.

Amendments to this subpart may be proposed, from time to time, by the committee or by the Secretary.

Subpart—Rules and Regulations

Definitions

§ 946.100 Order.

"Order" means Order No. 946 (§§ 946.1 to 946.78), as amended, regulating the handling of Irish potatoes grown in the State of Washington.

[39 FR 1971, Jan. 16, 1974]

§ 946.101 Marketing agreement.

"Marketing agreement" means Marketing Agreement No. 113, as amended.

[39 FR 1972, Jan. 16, 1974]

§ 946.102 Terms.

Terms used in this subpart shall have the same meaning as set forth in said marketing agreement and order.

[22 FR 8177, Oct. 16, 1957. Redesignated at 26 FR 12751, Dec. 30, 1961]

§ 946.103 Reestablishment of districts.

(a) Pursuant to § 946.31, on and after July 1, 1975, the following new districts are established:

(1) District No. 1—the counties of Ferry, Stevens, Pend Oreille, Spokane, Whitman, and Lincoln, plus the East Irrigation District of the Columbia Basin Project, plus the area of Grant County not included in either the Quincy or South Irrigation Districts which lies east of township vertical line R27E, plus the area of Adams County not included in either of the South or Quincy Irrigation Districts.

(2) District No. 2—the counties of Kittitas, Douglas, Chelan, and Okanogan, plus the Quincy Irrigation District of the Columbia Basin Project, plus the area of Grant County not included in the East or South Irrigation Districts which lies west of township line R28E.

(3) District No. 3—the counties of Benton, Klickitat, and Yakima.

(4) District No. 4—the counties of Walla Walla, Columbia, Garfield, and Asotin, plus the South Irrigation District of the Columbia Basin Project, plus the area of Franklin County not included in the South District.

(5) District No. 5—all of the remaining counties in the State of Washington, not included in Districts No. 1, 2, 3, and 4 of this paragraph.

(b) The new districts are established in the current fiscal period only for the purpose of making nominations of committee members for the coming fiscal period. The new districts are to be established as operating entities beginning on July 1, 1975.

[40 FR 12988, Mar. 24, 1975]

§ 946.104 Reapportionment of committee membership.

(a) Pursuant to § 946.25(c), membership representation of the State of Washington Potato Committee shall be reapportioned among the districts of the production area so as to provide the following members and their respective alternates:

(1) District No. 1—Three producer members and one handler member;

(2) District No. 2—Two producer members and one handler member;

(3) District No. 3—Two producer members and one handler member;

(4) District No. 4—Two producer members and one handler member;

(5) District No. 5—One producer member and one handler member. The producer member and his alternate

from District No. 5 shall each be a certified seed producer.

[40 FR 12988, Mar. 24, 1975, as amended at 43 FR 52199, Nov. 9, 1978]

CERTIFICATES OF PRIVILEGE

§ 946.120 Application.

(a) Whenever shipments for special purposes pursuant to § 946.54 are relieved in whole or in part from regulations issued under § 946.52, each handler desiring to make shipments of potatoes for the following purposes shall obtain from the committee, prior to initiating such shipments, a special purpose certificate permitting such shipments:

(1) Charity;

(2) Export;

(3) Prepeeling outside the district where grown; and

(4) Grading or storing at any specified location in Morrow or Umatilla Counties in the State of Oregon.

(b) Applications for special purpose shipment certificates shall be made on forms furnished by the committee. Such application shall contain the name and address of the handler, and such other information that the committee may require such as the estimated amount of potatoes to be shipped, the grades and sizes of potatoes to be shipped (when applicable), expected consignees and destinations, certification by applicant that statements are correct and that he will comply with disposition stated therein, and other information or documents as the committee may require in safeguarding against entry of such potatoes into trade channels other than those for which the special purpose certificate was granted.

[39 FR 1972, Jan. 16, 1974]

§ 946.121 Issuance.

The committee, or its duly authorized agents, shall give prompt consideration to each applicant for a special purpose certificate. Upon approval of the application, a special purpose certificate shall be issued authorizing the applicant named therein to ship potatoes for a specified purpose for a specified period of time.

[39 FR 1972, Jan. 16, 1974]

§ 946.122 Reports.

Each handler shipping potatoes under and pursuant to a special purpose certificate shall supply to the committee, upon request, a report thereon showing the name and address of the shipper, car or truck number, Federal-State Inspection Certificate number (if such inspection is required by regulations in effect at the time of such shipment), loading point, destination and consignee.

[39 FR 1972, Jan. 16, 1974]

§ 946.123 Denial and appeals.

The committee may rescind a special purpose certificate issued to a handler for the purpose specified in § 946.120(a), or deny such special purpose certificates to a handler, upon proof satisfactory to the committee that such handler has shipped potatoes contrary to those provisions. Such committee action denying or rescinding a special purpose certificate shall apply to and not exceed a reasonable period of time as determined by the committee. Any handler who has been denied a special purpose certificate or who has had a special purpose certificate rescinded may appeal to the committee for reconsideration. Such appeal shall be in writing.

[39 FR 1972, Jan. 16, 1974]

MODIFICATION OF INSPECTION REQUIREMENTS

§ 946.130 Application.

Any handler whose packing facilities are located in an area where a Washington State Department of Agriculture, Plant Industry Division Office or Federal-State Inspector is not readily available to perform the inspection required by this part may, pursuant to § 946.60(a), apply to the committee for a permit authorizing modification of inspection requirements. Applications shall be made on forms furnished by the committee and shall contain such information as the committee, with approval of the Secretary, may find necessary in making a determination regarding the issuance of such permit.

[39 FR 1972, Jan. 16, 1974]

§ 946.131 Issuance.

The committee, or its duly authorized agents, shall give prompt consideration to each application for an inspection modification permit. Approval of an application shall be evidenced by the issuance of an applicable permit.

[39 FR 1972, Jan. 16, 1974]

§ 946.132 Reports.

Each handler shipping potatoes pursuant to an inspection modification permit shall report periodically as specified by the committee on forms furnished by the committee the following information on each shipment: quantity of potatoes, variety or varieties, grade, minimum size, type of container(s), date of shipment, carrier, destination, and name and address of receiver.

[39 FR 1972, Jan. 16, 1974]

§ 946.133 Cancellation.

Whenever the committee finds that shipments of potatoes pursuant to an inspection modification permit are not in accordance with the application provisions of the order, such inspection modification permit may be cancelled.

[39 FR 1972, Jan. 16, 1974]

§ 946.140 Handling potatoes for commercial processing into products.

Pursuant to § 946.54(a)(6), shipments of potatoes for commercial processing into products may be made only in accordance with paragraphs (a) or (b) of this section.

(a) Shipments may be made to persons whose names are on the State of Washington Potato Committee's list of manufacturers of potato products. Such list may consist of firms actively engaged in the business of canning, freezing, or "other processing" as defined in the act.

(1) Persons desiring to have their name placed on the committee's list shall apply to the committee. Such application shall contain the following:

(i) Name and address of applicant;

(ii) Location and description of facilities for commercial processing into products;

(iii) Expected source of potatoes for commercial processing into products;

(iv) Such other information as the committee, with approval of the Secretary, may deem necessary.

(2) Upon receipt of an application for such listing, the State of Washington Potato Committee shall make such investigation as it deems necessary, and if it appears that the applicant may reasonably be expected to use potatoes covered by the application in accordance with the requirements of this section, it shall place the applicant's name on the State of Washington Potato Committee's list of manufacturers of potato products.

(b) For each shipment to a person whose name is not on the committee's list, the handler must provide evidence to the committee prior to shipment that the potatoes will be used only for processing into products. Further, he shall submit reports as prescribed by the committee and approved by the Secretary.

[39 FR 1972, Jan. 16, 1974]

§ 946.142 Operating reserve.

(a) The committee, with the approval of the Secretary, may carry over excess funds into subsequent fiscal years as an operating reserve: *Provided*, That funds in the operating reserve do not exceed approximately one fiscal year's expenses.

(b) The funds in said operating reserve may be used (1) to defray expenses incurred during any fiscal period prior to the time assessment income is sufficient to cover such expenses, (2) to cover deficits incurred during any fiscal period when assessment income is less than expenses, (3) to defray expenses incurred during any period when assessments are suspended or are inoperative and (4) to cover necessary expenses of liquidation in the event of termination of this part.

(c) Upon termination of this part any funds not required to defray the necessary expenses of liquidation shall be disposed of in such manner as the Secretary may determine to be appropriate. To the extent practical, such funds shall be returned pro rata to the

handlers from whom they were collected.

(d) Terms used in this section shall have the same meaning as when used in said marketing agreement and this part.

[32 FR 16199, Nov. 28, 1967. Redesignated at 44 FR 73012, Dec. 17, 1979]

NOTE: After January 1, 1979, "Budget of Expenses and Rate of Assessment" regulations (e.g. sections .200 through .299) and "Handling" regulations (e.g. sections .300 through .399) which are in effect for a year or less, will not be carried in the Code of Federal Regulations. For FEDERAL REGISTER citations affecting these regulations, see the "List of CFR Sections Affected" in this volume.

PART 947—IRISH POTATOES GROWN IN MODOC AND SISKIYOU COUNTIES, CALIF., AND IN ALL COUNTIES IN OREGON, EXCEPT MALHEUR COUNTY

Subpart—Order Regulating Handling

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947.150 Reestablishment of districts.
947.160 Reapportionment of committee membership.

AUTHORITY: Secs. 1-19, 48 Stat. 31, as amended; 7 U.S.C. 601-674.

Subpart—Order Regulating Handling

SOURCE: 20 FR 7068, Sept. 21, 1955, unless otherwise noted. Redesignated at 26 FR 12751, Dec. 30, 1961.

DEFINITIONS

§ 947.1 Secretary.

"Secretary" means the Secretary of Agriculture of the United States or any officer or employee of the United States Department of Agriculture to whom authority has heretofore been delegated, or to whom authority may hereafter be delegated, to act in his stead.

§ 947.2 Act.

"Act" means Public Act No. 10, 73d Congress, as amended and as reenacted and amended by the Agricultural Marketing Agreement Act of 1937, as amended (48 Stat. 31, as amended; 7 U.S.C. 601 et seq.; 68 Stat. 906, 907, 1047).

§ 947.3 Person.

"Person" means an individual, partnership, corporation, association, or any organized group or business unit.

§ 947.4 Production area.

"Production area" means and includes Modoc and Siskiyou Counties in the State of California, and all counties, except Malheur, in the State of Oregon.

§ 947.5 Potatoes.

"Potatoes" means all varieties of Irish Potatoes grown within the aforesaid production area.

§ 947.6 Handler.

"Handler" is synonymous with "shipper" and means any person (except a common or contract carrier of potatoes owned by another person) who ships potatoes or causes potatoes to be shipped.

[35 FR 10741, July 2, 1970]

§ 947.7 Handle.

"Handle" is synonymous with "ship" and means to sell, transport, or in any other way to place potatoes, or cause potatoes to be placed in the current of the commerce within the production area or between the production area and any point outside thereof, or from any point in the adjoining States of Idaho and Washington and Malheur County, Oreg., to any other point: *Provided*, That the definition of "handle" shall not include the transportation of ungraded potatoes within the district where they were grown for the purpose of having such potatoes prepared for market, or stored, except that the committee may impose safeguards, pursuant to § 947.55 with respect to such potatoes.

[35 FR 10741, July 2, 1970]

§ 947.8 Producer.

"Producer" is synonymous with "grower" and means any person engaged in a proprietary capacity in the production of potatoes for market.

[35 FR 10741, July 2, 1970]

§ 947.9 Fiscal period.

"Fiscal period" means the period beginning and ending on the dates approved by the Secretary pursuant to recommendations by the committee.

§ 947.10 Committee.

"Committee" means the administrative committee, called the Oregon-California Potato Committee, established pursuant to § 947.25.

§ 947.11 Varieties.

"Varieties" means and includes all classifications or subdivisions of Irish potatoes according to those definitive characteristics now or hereafter recognized by the United States Department of Agriculture.

§ 947.12 Seed potatoes.

"Seed potatoes" means and includes all potatoes officially certified and tagged, marked or otherwise appropriately identified under the supervision of the official seed potato certifying agency of the State from which the potatoes are shipped, or other seed certification agencies which the Secretary may recognize.

§ 947.14 Pack.

"Pack" means a unit of potatoes in any type of container and which falls within specific weight limits or within specific grade limits recommended by the committee and approved by the Secretary.

§ 947.15 Grade and size.

"Grade" means any one of the officially established grades of potatoes, and "size" means any one of the officially established sizes of potatoes, as defined and set forth in:

(a) The U.S. Standards for Potatoes issued by the U.S. Department of Agriculture (§§ 51.1540 to 51.1556 of this title), or amendments thereto, or modifications thereof, or variations based thereon;

(b) U.S. Consumer Standards for Potatoes as issued by the U.S. Department of Agriculture (§§ 51.1575 to 51.1587 of this title), or amendments thereto, or modifications thereof, or variations based thereon;

(c) U.S. Standards for Grades of Potatoes for Processing as issued by the U.S. Department of Agriculture (§§ 51.3410 to 51.3424 of this title), or amendments thereto, or modifications thereof, or variations based thereon;

(d) U.S. Standards for Grades of Peeled Potatoes (§§ 52.2421 to 52.2433 of this title), or amendments thereto, or modifications thereof, or variations based thereon; and

(e) Standards for potatoes issued by the State of Oregon or California, or amendments thereto, or modifications thereof, or variations based thereon.

[35 FR 10741, July 2, 1970]

§ 947.16 Grading.

"Grading" is synonymous with "preparing for market" which means the sorting or separating of potatoes into grades and sizes for market purposes.

§ 947.17 Export.

"Export" means shipment of potatoes beyond the boundaries of continental United States.

§ 947.18 District.

"District" means each one of the geographical divisions of the production area established pursuant to § 947.32.

ADMINISTRATIVE COMMITTEE

§ 947.25 Establishment and membership.

(a) The Oregon-California Potato Committee consisting of 14 members, of whom nine shall be producers and five shall be handlers, is hereby established. For each member of the committee there shall be an alternate who shall have the same qualifications as the member.

(b) An alternate member of the committee shall act in the place and stead of the member for whom he is an alternate during such member's absence. In the event of the death, removal, resignation, or disqualification of a member his alternate shall act for him until a successor for such member is selected and has qualified.

[20 FR 7068, Sept. 21, 1955, as amended at 35 FR 10741, July 2, 1970]

§ 947.26 Procedure.

(a) Nine members of the committee shall be necessary to constitute a quorum and nine concurring votes shall be required to pass any motion or approve any committee action.

(b) The committee may provide for meeting by telephone, telegraph, or other means of communication and any vote cast at such meeting shall be confirmed promptly in writing: *Provided,* That if any assembled meeting is held, all votes shall be cast in person.

[20 FR 7068, Sept. 21, 1955, as amended at 35 FR 10741, July 2, 1970]

§ 947.27 Selection.

(a) Persons selected as committee members or alternates to represent producers or handlers shall be produc-

ers or handlers, respectively, or officers or employees of a corporate producer or handler, respectively, in the district for which selected and shall be residents of such district.

(b) The Secretary shall select three producer members of the committee, with their respective alternates, from District No. 1; two producer members, with their respective alternates, from each of Districts No. 2 and No. 4; and one producer member, with his respective alternate, from each of Districts No. 3 and No. 5. The Secretary shall also select one handler member of the committee with his respective alternate, from each of Districts Nos. 1, 2, 3, 4, and 5.

(c) Any person selected by the Secretary as a committee member or as an alternate shall qualify by filing a written acceptance with the Secretary within ten days after being notified of such selection.

[20 FR 7068, Sept. 21, 1955, as amended at 35 FR 10742, July 2, 1970]

§ 947.28 Term of office.

(a) Except as otherwise provided in this section, the term of office of committee members and alternates shall be 2 years beginning June 1 and ending May 31. The terms of office of members and alternates shall be so determined that approximately one-half of the total producer committee membership and approximately one-half of the total handler committee membership shall terminate each May 31.

(b) Committee members and alternates shall serve during the term of office for which they are selected and have qualified, or during that portion thereof beginning on the date on which they qualify during the current term of office and continuing until the end thereof, and until their successors are selected and have qualified.

(c) The initial producer member and his alternate for District No. 5 shall be selected for a period of 2 years beginning with the committee selected for the term of office beginning June 1, 1970, through May 31, 1972. The initial handler member and his alternate for District No. 5 shall be selected for a 1-year term of office beginning June 1, 1970, through May 31, 1971, and thereafter each term of office shall be for 2 years.

[20 FR 7068, Sept. 21, 1955, as amended at 35 FR 10742, July 2, 1970]

§ 947.29 Powers.

The committee shall have the following powers:

(a) To administer the provisions of this subpart in accordance with its terms;

(b) To make rules and regulations to effectuate the terms and provisions of this subpart;

(c) To receive, investigate, and report to the Secretary complaints of violation of the provisions of this subpart; and

(d) To recommend to the Secretary amendments to this subpart.

§ 947.30 Duties.

It shall be the duty of the committee:

(a) At the beginning of each fiscal period, to meet and organize, to select a chairman and such other officers as may be necessary, to select subcommittees of committee members, and to adopt such rules and regulations for the conduct of its business as it may deem advisable;

(b) To act as intermediary between the Secretary and any producer or handler;

(c) To furnish to the Secretary such available information as he may request;

(d) To appoint such employees, agents, and representatives as it may deem necessary and to determine the salaries and define the duties of each such person;

(e) To investigate, from time to time, and to assemble data on the growing, harvesting, shipping, and marketing conditions with respect to potatoes;

(f) To keep minutes, books, and records which clearly reflect all of the acts and transactions of the committee and such minutes, books, and records shall be subject to examination at any time by the Secretary or his authorized agent or representative;

(g) To make available to producers and handlers the committee voting record on recommended regulations and on other matters of policy;

(h) At the beginning of each fiscal period, to submit to the Secretary a budget of its expenses for such fiscal period, together with a report thereon;

(i) To cause the books of the committee to be audited by a competent accountant at least once each fiscal period, and at such other time as the committee may deem necessary or as the Secretary may request, and the report of such audit shall show the receipt and expenditure of funds collected pursuant to this subpart; and, a copy of each such report shall be made available at the principal office of the committee for inspection by producers and handlers;

(j) To consult, cooperate, and exchange information with other potato marketing committees and other individuals or agencies in connection with all proper committee activities and objectives under this subpart; and

(k) To establish, and pay the expenses of, advisory subcommittees for the purpose of consulting with Federal, State, and other appropriate agencies with respect to the establishment of marketing research and development projects pursuant to § 947.47.

§ 947.31 Expenses and compensation.

Committee members and their respective alternates when acting on committee business shall be reimbursed for reasonable expenses necessarily incurred by them in the performance of their duties and in the exercise of their powers under this subpart. In addition, they may receive reasonable compensation at a rate recommended by the committee and approved by the Secretary.

[35 FR 10742, July 2, 1970]

§ 947.32 Districts.

(a) The following districts of the production area are hereby established as follows:

District No. 1. The counties of Crook, Deschutes, and Jefferson in the State of Oregon;

District No. 2. The counties of Klamath, Lake, Jackson, and Josephine in the State of Oregon;

District No. 3. The counties of Curry, Coos, Douglas, Lane, Lincoln, Benton, Linn, Polk, Marion, Yamhill, Tillamook, Washington, Clatsop, Columbia, Multnomah, Clackamas, and Hood River in the State of Oregon;

District No. 4. The counties of Modoc and Siskiyou in the State of California;

District No. 5. The counties of Wasco, Sherman, Gilliam, Morrow, Umatilla, Wallowa, Union, Baker, Grant, Wheeler, and Harney in the State of Oregon.

(b) The Secretary, upon the recommendation of the committee, may reestablish districts within the production area and may reapportion committee membership among the various districts: *Provided,* That in recommending any such changes in districts or representation, the committee shall give consideration to (1) the relative importance of new areas of production, (2) changes in the relative position of existing districts with respect to production, (3) the geographic location of areas of production as they would affect the efficiency of administering this part, and (4) other relevant factors: *Provided, further,* That there shall be no change in the total number of committee members or in the total number of districts.

[20 FR 7068, Sept. 21, 1955, as amended at 35 FR 10742, July 2, 1970]

§ 947.33 Nominations.

The Secretary may select the members of the Oregon-California Potato Committee and their respective alternates from nominations which may be made in the following manner:

(a) A meeting or meetings of producers and handlers shall be held by the committee in each district for which nominees are to be selected, not later than April 1 of each year, to designate nominees for members and alternatives to the committee;

(b) At least one nominee shall be designated for each position as member and for each position as alternate member on the committee which is vacant, or which is to become vacant the following June 1;

(c) The names of nominees shall be supplied to the Secretary in such manner and form as he may prescribe, not later than May 1 of each year, or by such other date as may be specified by the Secretary;

(d) Only producers may participate in designating producer nominees and only handlers may participate in desig-

nating handler nominees. Any person who operates in more than one district or is engaged in producing and handling potatoes, shall elect the classification (i.e., producer or handler), and the district within which he desires to participate in designating nominees;

(e) Regardless of the number of districts in which a person produces or handles potatoes, each such person is entitled to cast only one vote on behalf of himself, his agents, subsidiaries, affiliates, and representatives in designating nominees for committee members and alternates. An eligible voter's privilege of casting only one vote as aforesaid shall be construed to permit a voter to cast one vote for each position to be filled in the district in which he elects to vote; and

(f) If nominations are not made within the time and in the manner specified in this section, the Secretary may, without regard to nominations, select the committee members and alternates on the basis of the representation provided for in this subpart.

[35 FR 10742, July 2, 1970]

§ 947.34 Vacancies.

To fill any vacancy occasioned by the failure of any person selected as a committee member or as an alternate to qualify, or in the event of the death, removal, resignation, or disqualification of any qualified member or alternate, a successor for his unexpired term may be selected by the Secretary from nominations made in the manner specified in § 947.33, or the Secretary may select such committee member or alternate from previously unselected nominees on the current nominee list from the district involved. If the names of nominees to fill any such vacancy are not made available to the Secretary within 30 days after such vacancy occurs, the Secretary may fill such vacancy without regard to nominations, which selection shall be made on the basis of the representation provided for in this subpart.

§ 947.35 Annual report.

The committee shall prepare and submit to the Secretary, within 2 months following the last day of each fiscal period, an annual report covering such fiscal period, and make a copy available to each handler and producer who requests it. This annual report shall contain at least:

(a) A complete review of the regulatory operations during the fiscal period;

(b) An appraisal of the effect of such regulatory operations upon the potato industry within the production area; and

(c) Any recommendations for changes.

[35 FR 10742, July 2, 1970]

Expenses and Assessments

§ 947.40 Expenses.

The committee is authorized to incur such expenses as the Secretary finds are reasonable and likely to be incurred by it during each fiscal period for such purposes as the Secretary may, pursuant to the provisions of this subpart, determine to be appropriate and for the maintenance and functioning of the committee. The committee shall submit to the Secretary a budget for each fiscal period, including an explanation of the items appearing therein, and a recommendation as to the rate of assessment for such fiscal period.

[35 FR 10742, July 2, 1970]

§ 947.41 Assessments.

(a) Each handler shall pay to the committee upon demand his pro rata share of the expenses authorized by the Secretary for each fiscal period. Each handler's pro rata share shall be the rate of assessment per hundredweight fixed by the Secretary times the quantity of potatoes which he handles as the first handler thereof. At any time during or after a fiscal period, the Secretary may increase the rate of assessment as necessary to cover authorized expenses. The payment of expenses for the maintenance and functioning of the committee may be required during periods when no regulations are in effect. If a handler does not pay his assessment within the time prescribed by the committee, the assessment may be increased by a late payment charge or an interest charge, at rates prescribed by the committee with the approval of the Secretary.

(b) Excess funds: At the end of a fiscal period, funds in excess of the year's expenses shall be placed in an operating reserve not to exceed approximately one fiscal period's operational expenses or such lower limits as the committee, with the approval of the Secretary, may establish. Funds in such reserve shall be available for use by the committee for expenses authorized pursuant to § 947.40. Funds in excess of those placed in the operating reserve shall be refunded to handlers. Each handler's share of such excess shall be the amount of assessments he paid in excess of his pro rata share of the actual expenses of the committee and the addition, if any, to the operating reserve.

(c) Accounting of funds upon termination of order: Any money collected as assessments pursuant to this subpart and remaining unexpended in the possession of the committee after termination of this part shall be distributed in such manner as the Secretary may direct: *Provided*, That to the extent practical, such funds shall be returned pro rata to the persons from whom such funds were collected.

[35 FR 10742, July 2, 1970]

Research and Development

§ 947.47 Research and development.

The committee, with the approval of the Secretary, may provide for the establishment of marketing research and development projects designed to assist, improve, or promote the marketing, distribution, and consumption of potatoes.

Regulation

§ 947.50 Marketing policy.

(a) *Preparation.* Prior to each marketing season the committee shall consider and prepare a proposed policy for the marketing of potatoes. In developing its marketing policy the committee shall investigate relevant supply and demand conditions for potatoes. In such investigations the committee shall give appropriate consideration to the following:

(1) Market prices for potatoes, including prices by grade, size, quality, and maturity in different packs, or any other shipping unit;

(2) Supply of potatoes by grade, size, quality, and maturity in the production area and in other production areas;

(3) The trend and level of consumer income;

(4) Establishing and maintaining orderly marketing conditions for potatoes;

(5) Orderly marketing of potatoes as will be in the public interest; and

(6) Other relevant factors.

(b) *Reports.* (1) The committee shall submit a report to the Secretary setting forth the aforesaid marketing policy and it shall notify producers and handlers of the contents of such report.

(2) In the event it becomes advisable to shift from such marketing policy because of changed supply and demand conditions, the committee shall prepare a new marketing policy in accordance with the manner previously outlined. The committee shall submit a report thereon to the Secretary and notify producers and handlers of the contents of such report on the revised or amended marketing policy.

§ 947.51 Recommendations for regulations.

The committee shall recommend to the Secretary grade, size, quality, and maturity regulations, or amendments thereto, or modifications thereof, whenever it finds that such regulations as provided in § 947.52 will tend to effectuate the declared policy of the act. The committee also may recommend modification, suspension, or termination of any regulation, or amendments thereto, in order to facilitate the handling of potatoes for the purposes authorized in § 947.54. The committee may also recommend amendment, termination, or suspension of any regulation issued under this part.

§ 947.52 Issuance of regulations.

(a) The Secretary shall limit the shipment of potatoes as set forth in this subpart whenever he finds from the recommendation and information

submitted by the committee, or from other available information, that it would tend to effectuate the declared policy of the act:

(1) To regulate, in any or all portions of the production area, the handling of particular grades, sizes, qualities, or maturities of any or all varieties of potatoes, or any combination of the foregoing, during any period;

(2) To regulate the handling of particular grades, sizes, qualities, or maturities of any or all varieties of potatoes, or any combination of the foregoing during any period, in the States of Idaho and Washington and Malheur County in Oregon which had been shipped from the production area to specified locations therein for grading or storage pursuant to § 947.54.

(3) To regulate the handling of particular grades, sizes, qualities, or maturities of any or all varieties differently, for different portions of the production area, for different uses or outlets, for potatoes for prepeeling to different markets, for different packs, or for any combination of the foregoing, during any period; and

(4) To regulate the shipment of potatoes by establishing, in terms of grades, sizes, or both, minimum standards of quality and maturity.

(b) The Secretary may amend any regulation issued under this subpart whenever he finds that such amendment would tend to effectuate the declared policy of the act. The Secretary may also terminate or suspend any regulation whenever he finds that such regulation obstructs or no longer tends to effectuate the declared policy of the act.

(c) The Secretary shall notify the committee of any such regulation issued pursuant to this section and the committee shall give reasonable notice thereof to handlers.

[35 FR 10742, July 2, 1970]

§ 947.53 Minimum quantities.

The committee, with the approval of the Secretary, may establish, for any or all portions of the production area, minimum quantities below which shipments will be free from regulations issued pursuant to this part.

[35 FR 10743, July 2, 1970]

§ 947.54 Shipments for specified purposes.

(a) Whenever the Secretary finds, upon the basis of the recommendations and information submitted by the committee, or from other available information, that it will tend to effectuate the declared policy of the act, he shall modify, suspend, or terminate any or all regulations issued pursuant to this part, in order to facilitate shipments of potatoes for the following purposes:

(1) Livestock feed;

(2) Charity;

(3) Export;

(4) Seed;

(5) Prepeeling;

(6) Canning and freezing;

(7) Processing into other products, including "other processing," pursuant to Pub. L. 91-196, 91st Cong., second session (Feb. 20, 1970);

(8) Such other purposes as may be specified by the committee, with the approval of the Secretary; and

(9) Grading or storing between the districts within the production area or to and within specified locations in the adjoining States of Idaho and Washington and Malheur County in the State of Oregon.

(b) The Secretary shall give prompt notice to the committee of any modification, suspension, or termination of regulations pursuant to this section, or of any approval issued by him under the provisions of this section.

[35 FR 10743, July 2, 1970]

§ 947.55 Safeguards.

(a) The committee, with the approval of the Secretary, may prescribe adequate safeguards to prevent shipments pursuant to § 947.54 from entering channels of trade and other outlets for other than the specific purpose authorized therefor.

(b) Safeguards provided by this section may include, but shall not be limited to, requirements that handlers:

(1) Shall obtain the inspection required by § 947.60 or pay the assessment provided by § 947.41 or both, in connection with the potato shipments effected in accordance with § 947.54, and

(2) Shall obtain a Special Purpose Certificate from the committee for

shipments of potatoes effected or to be effected under provisions of § 947.54.

(c) The committee, with the approval of the Secretary, shall prescribe rules governing the issuance and the contents of Special Purpose Certificates.

(d) The committee may rescind, or deny to any handler, the Special Purpose Certificate if proof satisfactory to the committee is obtained that potatoes shipped by him for the purpose stated in the certificate were handled contrary to the provisions of the certificate and this section.

(e) The committee shall make reports to the Secretary, as requested, showing the number of applications for such certificates, the quantity of potatoes covered by such applications for such certificates, the number of such applications denied, and certificates granted, the quantity of potatoes shipped under duly issued certificates, and such other information as may be requested by the Secretary.

[35 FR 10743, July 2, 1970]

Inspection and Certification

§ 947.60 Inspection and certification.

(a) During any period in which the handling of potatoes is regulated pursuant to § 947.42, § 947.52, or § 947.54, or any combination thereof, no handler shall handle potatoes unless such potatoes are inspected by an authorized representative of the Federal-State Inspection Service, or such other inspection service as the Secretary shall designate, and are covered by a valid inspection certificate, except when relieved from such requirements pursuant to § 947.53 or § 947.54 or both.

(b) Regrading, resorting, or repacking any lot of potatoes shall invalidate any prior inspection certificates insofar as the requirements of this section are concerned. No handler shall handle potatoes after they have been regraded, resorted, repacked, or in any way further prepared for market, unless such potatoes are inspected by an authorized representative of the Federal-State Inspection Service, or such other inspection service as the Secretary shall designate: *Provided,* That such inspection requirements on regraded, resorted, or repacked potatoes may be modified, suspended, or terminated under rules and regulations recommended by the committee, and approved by the Secretary.

(c) Insofar as the requirements of this section are concerned, the length of time for which an inspection certificate is valid may be established by the committee with the approval of the Secretary.

(d) When potatoes are inspected in accordance with the requirements of this section, a copy of each inspection certificate issued shall be made available to the committee by the inspection service.

Exemptions

§ 947.65 Procedure.

The committee may adopt, subject to approval of the Secretary, the procedures pursuant to which certificates of exemption will be issued to producers or handlers.

§ 947.66 Granting exemptions.

(a) The committee may issue certificates of exemption to any producer who applies for such exemption and furnishes adequate evidence to the committee: (1) That by reason of a regulation issued pursuant to § 947.52 he will be prevented from handling as large a proportion of his production as the average proportion of production handled by all producers in said applicant's immediate production area; and (2) that the grade, size, or quality of the applicant's potatoes have been adversely affected by acts beyond the applicant's control and by acts beyond reasonable expectation. Each certificate shall permit the producer to handle the amount of potatoes specified thereon. Such certificates shall be transferred with such potatoes at time of shipment.

(b) The committee may issue certificates of exemption to any handler who applies for such exemption and furnishes adequate evidence to the committee: (1) That by reason of a regulation issued pursuant to § 947.52 he will be prevented from handling as large a proportion of his storage holdings of ungraded potatoes, acquired

during or immediately following the digging season, as the average proportion of ungraded storage holdings handled by all handlers in said applicant's immediate shipping area; and (2) that the grade, size, or quality of the applicant's potatoes have been adversely affected by acts beyond the applicant's control and by acts beyond reasonable expectation. Each certificate shall permit the handler to handle the amount of potatoes specified thereon. Such certificate shall be transferred with such potatoes at time of shipment.

(c) The committee shall be permitted at any time to make a thorough investigation of any producer's or handler's claim pertaining to exemptions.

§ 947.67 Appeal.

If any applicant for exemption certificates is dissatisfied with the determination by the committee with respect to his application, said applicant may file an appeal with the committee. Such an appeal must be taken promptly after the determination by the committee from which the appeal is taken. Any applicant filing an appeal shall furnish evidence satisfactory to the committee for a determination on the appeal. The committee shall thereupon reconsider the application, examine all available evidence, and make a final determination concerning the application. The committee shall notify the appellant of the final determination and shall furnish the Secretary with a copy of the appeal and a statement of considerations involved in making the final determination.

§ 947.68 Review, records, and reports of exemptions.

(a) The Secretary shall have the right to modify, change, alter, or rescind any procedure and any exemptions granted pursuant to §§ 947.65, 947.66, 947.67, or any combination thereof.

(b) The committee shall maintain a record of all applications submitted for exemption certificates, a record of all exemption certificates issued and denied and the quantity of potatoes covered by such exemption certificates, a record of the amount of potatoes handled under exemption certificates, a record of appeals for reconsideration of applications, and such information as may be requested by the Secretary. Periodic reports on such records shall be compiled and issued by the committee upon request of the Secretary.

EFFECTIVE TIME AND TERMINATION

§ 947.70 Effective time.

(a) The provisions of this subpart shall become effective at such time as the Secretary may declare above his signature attached to this subpart, and shall continue in force until terminated in one of the ways specified in this subpart.

(b) All rules and regulations issued by the Secretary pursuant to this part (Order No. 947, as amended), which are in effect immediately prior to the date of this amendment shall continue in effect under this subpart as originally issued, or subsequently modified, until such rules and regulations are changed, modified, or suspended in accordance with this subpart.

§ 947.71 Termination.

(a) The Secretary may at any time terminate the provisions of this subpart by giving at least one day's notice by means of a press release or in any other manner which he may determine.

(b) The Secretary may terminate or suspend the operation of any or all of the provisions of this subpart whenever he finds that such provisions do not tend to effectuate the declared policy of the act.

(c) The Secretary shall terminate the provisions of this subpart at the end of any fiscal period whenever he finds that such termination is favored by a majority of producers who, during the preceding fiscal period, have been engaged in the production for market of potatoes; *Provided*, That such majority has, during such period, produced for market more than fifty percent of the volume of such potatoes produced for market; but such termination shall be effective only if announced on or before June 30 of the then current fiscal period.

(d) The provisions of this subpart shall in any event terminate whenever the provisions of the act authorizing them cease to be in effect.

§ 947.72 Proceedings after termination.

(a) Upon the termination of the provisions of this subpart, the then functioning members of the committee shall continue as trustees, for the purpose of liquidating the affairs of the committee, of all the funds and property then in the possession of or under control of the committee, including claims for any funds unpaid or property not delivered at the time of such termination. Action by said trusteeship shall require the concurrence of a majority of the said trustees.

(b) The said trustees shall continue in such capacity until discharged by the Secretary; shall, from time to time, account for all receipts and disbursements and deliver all property on hand, together with all books and records of the committee and of the trustees, to such person as the Secretary may direct; and shall, upon request of the Secretary, execute such assignments or other instruments necessary or appropriate to vest in such person full title and right to all of the funds, property, and claims vested in the committee or the trustees pursuant to this subpart.

(c) Any person to whom funds, property, or claims have been transferred or delivered by the committee or its members, pursuant to this section, shall be subject to the same obligations imposed upon the members of the committee and upon the said trustees.

§ 947.73 Effect of termination or amendment.

Unless otherwise expressly provided by the Secretary, the termination of this subpart or of any regulation issued pursuant to this subpart, or the issuance of any amendments to either thereof, shall not: (a) Affect or waive any right, duty, obligation, or liability which shall have arisen or which may thereafter arise in connection with any provision of this subpart or any regulation issued under this subpart; (b) release or extinguish any violation of this subpart or of any regulation issued under this subpart; or (c) affect or impair any rights or remedies of the Secretary or of any other person with respect to any such violation.

MISCELLANEOUS PROVISIONS

§ 947.80 Reports.

(a) Upon the request of the committee, with the approval of the Secretary, each handler shall furnish to authorized employees of the committee, in such manner, on such forms and at such time as the committee may prescribe, such reports and other information as may be necessary for the committee to perform its duties under this part. The Secretary shall have the right to modify, change, or rescind any requests for reports pursuant to this section.

(b) Such reports may include, but are not necessarily limited to, the following: (1) The quantities of potatoes received by a handler; (2) the quantities disposed of by him segregated as to the respective quantities subject to regulation and not subject to regulation; (3) the date of each such disposition and the identification of the carrier transporting such potatoes; and (4) identification of the inspection certificates relating to the potatoes which are handled pursuant to § 947.52 or § 947.54, or both.

(c) All such reports shall be kept in the custody and under the control of one or more employees of the committee so that the information contained therein, which may adversely affect the competitive position of any handler in relation to other handlers will not be disclosed. Compilations of general reports from data submitted by handlers is authorized, subject to the prohibition of disclosure of individual handlers' identities or operations.

(d) Each handler shall maintain and make available on request for at least 2 succeeding years, following his handling of potatoes, such records and documents on potatoes received and potatoes disposed of by him as may be necessary to verify reports required to be submitted to the committee pursuant to this section.

[35 FR 10743, July 2, 1970]

§ 947.81 Compliance.

Except as provided in this subpart, no handler shall handle potatoes, the handling of which has been prohibited by the Secretary in accordance with provisions of this subpart, and no handler shall handle potatoes except in conformity to the provisions of this subpart.

§ 947.82 Right of the Secretary.

The members of the committee (including successors and alternates), and any agent or employee appointed or employed by the committee, shall be subject to removal or suspension by the Secretary at any time. Each and every order, regulation, decision, determination or other act of the committee shall be subject to the continuing right of the Secretary to disapprove of the same at any time. Upon such disapproval, the disapproved action of the said committee shall be deemed null and void, except as to acts done in reliance thereon or in compliance therewith prior to such disapproval by the Secretary.

§ 947.83 Duration of immunities.

The benefits, privileges, and immunities conferred upon any persons by virtue of this subpart shall cease upon the termination of this subpart, except with respect to acts done under and during the existence of this subpart.

§ 947.84 Agents.

The Secretary may, by designation in writing, name any person, including any officer or employee of the Government, or name any agency in the United States Department of Agriculture, to act as his agent or representative in connection with any of the provisions of this subpart.

§ 947.85 Derogation.

Nothing contained in this subpart is, or shall be construed to be, in derogation or in modification of the rights of the Secretary or of the United States to exercise any powers granted by the act or otherwise, or, in accordance with such powers, to act in the premises whenever such action is deemed advisable.

§ 947.86 Personal liability.

No member or alternate of the committee, nor any employee or agent thereof, shall be held personally responsible, either individually or jointly with others, in any way whatsoever to any handler or any person for errors in judgment, mistakes, or other acts, either of commission or omission, as such member, alternate, or employee, except for acts of dishonesty.

§ 947.87 Separability.

If any provision of this subpart is declared invalid, or the applicability thereof to any person, circumstance, or thing is held invalid, the validity of the remainder of this subpart, or the applicability thereof to any other person, circumstance, or thing, shall not be affected thereby.

§ 947.88 Amendments.

Amendments to this subpart may be proposed from time to time, by the committee or by the Secretary.

Subpart—Rules and Regulations

SOURCE: 22 FR 8176, Oct. 16, 1957, unless otherwise noted. Redesignated at 26 FR 12751, Dec. 30, 1961.

GENERAL

§ 947.100 Communications.

Unless otherwise provided in the marketing agreement and order (§§ 947.1 to 947.88), or by specific direction of the committee, all reports, applications, submittals, requests, and communications in connection therewith shall be addressed to the committee at its principal office.

DEFINITIONS

§ 947.110 Order.

"Order" means Order No. 947, as amended (§§ 947.1 to 947.88), regulating the handling of Irish potatoes grown in Modoc and Siskiyou Counties in California and in all Counties in Oregon, except Malheur County.

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§ 947.111 Marketing agreement.

"Marketing agreement" means Marketing Agreement No. 114, as amended.

§ 947.112 Terms.

Terms used in this subpart shall have the same meaning as when used in said marketing agreement and order.

§ 947.113 Area determinations.

"Immediate production area," and "immediate shipping area," respectively, are each synonymous with "district."

EXEMPTIONS

§ 947.120 Hardship exemption.

Handlers seeking an exemption pursuant to the provisions of §§ 947.65-947.67 shall make application to the committee on forms furnished by it. All information and conditions relative to the application will be considered promptly. The decision of the committee shall be final subject to the appeal procedures prescribed in § 947.67.

[39 FR 2270, Jan. 18, 1974]

§ 947.123 Reports and records.

Any person handling potatoes under § 947.120 shall record and report shipments in such frequency as the committee may prescribe.

[39 FR 2270, Jan. 18, 1974]

SAFEGUARDS

§ 947.130 Special Purpose Certificates—application and issuance.

Each person handling potatoes for special purposes under safeguard requirements imposed pursuant to this part shall apply to the committee for a Special Purpose Certificate. The committee shall make available, on request, the forms for such application as well as such report forms at it may require under § 947.132.

[39 FR 2270, Jan. 18, 1974]

§ 947.132 Reports.

(a) *Immature potatoes.* The applicant shall identify the producer and the dates on which such potatoes will be handled in his application for a Special Purpose Certificate.

(b) *Certified seed.* A special purpose shipment report shall be required for each load of certified seed when shipped outside the district (§ 947.18) where grown. The shipper of such certified seed potatoes shall return the completed form to the committee within the time period prescribed on such forms.

(c) *Livestock feed.* (1) The committee may require the applicant to furnish information specifying the location where the potatoes are to be consumed, the anticipated quantity of potatoes to be so handled, the total acreage from which the feed will be derived and the approximate starting and ending dates for such shipments.

(2) Any person handling potatoes for this purpose shall record and report the volume handled at such intervals as the committee may prescribe.

(d) *Grading and storing.* (1) An applicant shall furnish the committee information specifying the location where the potatoes were grown in the production area, the acreage to be harvested and the approximate starting and ending dates for the shipments.

(2) Upon conclusion of such shipments, he shall report to the committee the total gross volume of potatoes handled.

(3) The provisions of paragraph (c) of this section shall be applicable to the disposition of any portion of such shipments diverted to livestock feed.

[39 FR 2270, Jan. 18, 1974]

§ 947.133 Denial and appeals.

(a) The committee may suspend a handler's Special Purpose Certificate for a period of 30 days for failure to report as required by § 947.132.

(1) A handler who has had two or more certificates suspended or his certificate suspended twice within the preceding two year period may be refused a Special Purpose Certificate. The committee also may revoke for a period of up to one year the Special Purpose Certificate of any handler who has had his certificate suspended twice within a marketing season.

(b) Upon refusal, suspension or revocation of a Special Purpose Certifi-

cate, the handler may make a written appeal for reconsideration of the decision to the committee. The Chairman shall direct that the committee immediately reconsider the action.

[39 FR 2270, Jan. 18, 1974]

§ 947.134 Establishment of list of manufacturers of potato products.

(a) The committee shall establish and maintain in its office a list of firms who are manufacturers of potato products handled pursuant to § 947.54(a)(5)-(7) inclusive. Such list may consist of firms actively engaged in the business of canning, freezing, or "other processing" as defined in the act; or prepeeling as described in § 52.2422 United States Standards for Grades of Peeled Potatoes (§§ 52.2421-52.2433 of this title).

(b) Persons who wish to be placed on the committee's list of manufacturers of potato products may apply to the committee and shall supply the following information:

(1) Name and address of applicant;

(2) Location and description of facilities for commercial processing of potatoes into products;

(3) Expected source of potatoes for commercial processing into products;

(4) Certification to the Secretary that potatoes received for processing will not be diverted to the fresh market,

(5) Such other information as the committee, with the approval of the Secretary, may deem necessary.

Upon receipt of an application for such listing, the Oregon-California Potato Committee shall make such investigation as it deems necessary, and if it appears that the applicant may reasonably be expected to use potatoes covered by the application in accordance with and to comply with the requirements of this section, it shall place the person's name on the Oregon-California Potato Committee's list of manufacturers of potato products.

(c) If shipment is to a person whose name is not on the committee's list of manufacturers, the handler must provide evidence to the committee prior to shipment that the potatoes will be used only for processing into products. Further, he shall submit reports as prescribed by the committee and approved by the Secretary.

(d) The committee may remove from the list of manufacturers of potato products the name of any person who fails to comply with the safeguard requirements of this part.

[39 FR 2271, Jan. 18, 1974, as amended at 39 FR 31880, Sept. 3, 1974]

REESTABLISHMENT OF DISTRICTS

§ 947.150 Reestablishment of districts.

Pursuant to § 947.32(b) and the recommendation of the Oregon-California Potato Committee, the counties of Jackson and Josephine in the State of Oregon (currently a portion of District No. 3) are reestablished as a part of District No. 2. Terms used in this section shall have the same meaning as when used in said marketing agreement and this part.

[33 FR 14229, Sept. 20, 1968]

§ 947.160 Reapportionment of committee membership.

(a) Pursuant to § 947.32(b), the membership of the Oregon-California Potato Committee shall be apportioned among the districts so as to provide the following representation: (1) Producer membership—two members from each of Districts No. 2 and No. 5; three members from District No. 4; and one member from each of Districts No. 1 and No. 3; (2) Handler membership—one member from each of Districts No. 1, No. 2, No. 3, No. 4, and No. 5. The respective alternates shall be selected on the same basis of representation as the members.

(b) Terms used in this section shall have the same meaning as when used in said marketing agreement and this part.

[39 FR 30825, Aug. 26, 1974]

NOTE: After January 1, 1979, "Budget of Expenses and Rate of Assessment" regulations (e.g. sections .200 through .299) and "Handling" regulations (e.g. sections .300 through .399) which are in effect for a year or less, will not be carried in the Code of Federal Regulations. For FEDERAL REGISTER citations affecting these regulations, see the "List of CFR Sections Affected" in this volume.

PART 948—IRISH POTATOES GROWN IN COLORADO

Subpart—Order Regulating Handling

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948.200 Accounting and collections.

AUTHORITY: Secs. 1-19, 48 Stat. 31, as amended; 7 U.S.C. 601-674.

Subpart—Order Regulating Handling

SOURCE: 25 FR 7092, July 27, 1960, unless otherwise noted. Redesignated at 26 FR 12751, Dec. 30, 1961.

DEFINITIONS

§ 948.1 Secretary.

"Secretary" means the Secretary of Agriculture of the United States, or any officer or employee of the Department of Agriculture to whom authority has heretofore been delegated, or to whom authority hereafter may be delegated, to act in his stead.

§ 948.2 Act.

"Act" means Public Act No. 10 73d Congress, as amended and as reenacted and amended by the Agricultural Marketing Agreement Act of 1937, as amended (secs. 1-19, 48 Stat. 31, as amended; 7 U.S.C. 601-674).

§ 948.3 Person.

"Person" means an individual, partnership, corporation, association, legal representative, or any organized group or business unit of individuals.

§ 948.4 Area.

"Area" means any of the subdivisions of the State of Colorado as set forth in this section or as reestablished pursuant to § 948.53.

(a) "Area No. 1," commonly known as the Western Slope, includes and consists of the counties of Routt, Eagle, Pitkin, Gunnison, Hinsdale, La Plata, in the State of Colorado, and all counties in said State west of the aforesaid counties.

(b) "Area No. 2," commonly known as the San Luis Valley, includes and consists of the counties of Saguache, Huerfano, Las Animas, Mineral, Archuleta, in the State of Colorado, and all counties in said State, south of the counties enumerated in this definition of Area No. 2.

(c) "Area No. 3" includes and consists of all the remaining counties in the State of Colorado which are not included in Area No. 1 or Area No. 2.

§ 948.5 Potatoes.

"Potatoes" means and includes all varieties of Irish potatoes grown within any of the aforesaid areas.

§ 948.6 Seed potatoes.

"Seed potatoes" or "seed" means any potatoes which have been certified by the official seed certification agency of the State of Colorado and bear the official tags, seals, or other appropriate identification indicating such certification.

§ 948.7 Handler.

"Handler" is synonymous with "shipper" and means any person, except a common or contract carrier of potatoes owned by another person, who handles potatoes.

§ 948.8 Handle or ship.

"Handle" or "ship" means to transport, sell, or in any way to place potatoes in the current of the commerce between the State of Colorado and any point outside thereof.

§ 948.9 Producer.

"Producer" means any person engaged in the production of potatoes for market.

§ 948.10 Fiscal period.

"Fiscal period" means the period beginning and ending on the dates approved by the Secretary pursuant to recommendations by an area committee.

§ 948.11 Grade, size and maturity.

"Grade," means any of the officially established grades of potatoes, "Size" means any of the officially established sizes of potatoes, and "Maturity" means any of the stages of development or condition of the outer skin (epidermis) of potatoes, as defined in the United States Standards for Potatoes issued by the United States Department of Agriculture (§§ 51.1540 to 51.1556, inclusive of this title) or Colorado grades established by the Commissioner, or amendments thereto, or modifications thereof, or variations based on any of the foregoing.

§ 948.12 Varieties.

"Varieties" means all classifications or subdivisions of Irish potatoes according to those definitive characteristics now or hereafter recognized by the United States Department of Agriculture.

§ 948.13 Pack.

"Pack" means a quantity of potatoes in any type of container, which falls within specific weight limits, numerical limits, grade limits, or any combination of these recommended by the committee and approved by the Secretary.

§ 948.14 Container.

"Container" means a sack, bag, crate, box, basket, barrel, or bulk load or any other receptacle used in the packaging, transportation, or sale of potatoes.

§ 948.15 Culls.

"Culls" means potatoes which do not meet the requirements set forth in § 948.20.

§ 948.16 Committee.

"Committee" means any of the area committees established pursuant to § 948.50 or the Colorado Potato Committee established pursuant to § 948.51.

§ 948.17 Export.

"Export" means the shipment of potatoes to any destination which is not within the 48 contiguous States, or the District of Columbia, of the United States.

REGULATION

§ 948.20 Marketing policy.

(a) *General cull regulation.* (1) It shall be the marketing policy for the production area to maintain a general cull regulation in effect prohibiting the handling of potatoes for fresh market, except as otherwise provided in this subpart, which do not meet the requirements of the U.S. No. 2, or better, grade, 1½ inches minimum diameter and larger.

(2) Upon recommendation of the Colorado Potato Committee, or on other available information, the general cull regulation may be suspended or modified by the Secretary during a specified period with respect to any or all varieties of potatoes.

(b) *Area marketing policies.* Each season prior to or at the same time as initial recommendations are made pursuant to § 948.21, each area committee shall submit to the Secretary a report setting forth the marketing policy it deems desirable for the industry to follow in handling the respective area's potatoes during the ensuing season. Additional reports shall be submitted from time to time if it is deemed advisable by an area committee to adopt a new marketing policy because of changes in the demand and supply situation with respect to potatoes. The committee shall publicly announce the submission of each such marketing policy report and copies thereof shall be available at the committee's office for inspection by any producer or any handler. In determining each such marketing policy the committee shall give due consideration to the following:

(1) Supply of potatoes by grade, size, quality, and maturity in the respective area, in the production area, and in other areas;

(2) Market prices for fresh potatoes, including grower, shipping point, and terminal market prices by grade, size, and quality in different packs or in different containers;

(3) Market prices for potatoes in other outlets, including growers' and other market price levels by grade, size, and quality;

(4) The trend and level of consumer income;

(5) Establishing and maintaining such orderly marketing conditions for potatoes as will be in the public interest; and

(6) Other relevant factors.

§ 948.21 Recommendations for regulations.

An area committee upon complying with the requirements of § 948.20 may recommend regulations, or modifications, suspension or termination thereof, to the Secretary whenever it finds that such regulations as provided for in this subpart will tend to effectuate the declared policies of the act.

§ 948.22 Issuance of regulations.

(a) The Secretary shall limit by regulation the handling of potatoes whenever he finds from recommendations and information submitted by an area committee, or from other avail-

able information, that such regulation would tend to effectuate the declared policy of the act. Such regulation may:

(1) Limit the handling of particular grades, sizes, qualities, or maturities of any or all varieties of potatoes, or any combination of the foregoing during any period.

(2) Limit the handling of particular grades, sizes, qualities, or maturities of potatoes differently, for different varieties, for different containers, for different packs, for different portions of the production area, for different purposes under § 948.23, or for any combination of the foregoing, during any period.

(3) Provide a method through rules and regulations issued pursuant to this subpart for fixing the size, capacity, weight, dimensions, or pack of the container, or containers, which may be used in the packaging or handling of potatoes, or both.

(4) Establish in terms of grades, sizes, or both, minimum standards of quality and maturity.

(b) Any regulation issued hereunder may be amended, modified, suspended, or terminated by the Secretary on recommendations by an area committee, or on other available information, to provide for

(1) Such changes in regulations found necessary by changes in supplies, demand, or prices;

(2) Minimum quantities which should be relieved of regulatory or administrative obligations; or

(3) Relief from regulations no longer tending to effectuate the declared policies of the Act.

(c) The Secretary shall notify each committee of each regulation recommended by it and issued pursuant to this section. The respective committee shall give reasonable notice thereof to handlers. No regulation, except when relieving limitations, shall become effective less than two days after issuance thereof.

§ 948.23 Handling for special purposes.

Upon the basis of recommendations and information submitted by an area committee, or other available information, the Secretary, whenever he finds that it will tend to effectuate the declared purposes of the Act, shall modify, suspend, or terminate requirements in effect pursuant to §§ 948.20 to 948.22, inclusive, or §§ 948.40 or 948.77, or any combination thereof, to facilitate handling of potatoes for

(a) Relief or charity;

(b) Livestock feed;

(c) Export;

(d) Seed;

(e) Potatoes, other than certified seed, sold to a producer exclusively for planting within specific geographic limits;

(f) Manufacture or conversion into specified products;

(g) Other purposes recommended by the committees and approved by the Secretary.

§ 948.24 Safeguards.

(a) Each area committee, with the approval of the Secretary, shall prescribe adequate safeguards for potatoes handled pursuant to § 948.23 from entering trade channels other than those authorized by regulations and by such rules as may be necessary and incidental thereto.

(b) Such safeguards may include requirements that handlers or processors desiring to handle potatoes pursuant to § 948.23 shall:

(1) Apply for and obtain Certificates of Privilege from the area committee for handling potatoes affected or to be affected under the provisions of § 948.23;

(2) Obtain inspection as required by § 948.40, or pay the assessment levied pursuant to § 948.77, or both, except as modified pursuant to § 948.23 in connection with shipments made under any such certificate; and

(3) Furnish the committee such information, and execute or obtain execution of such documents, as the committee may require.

(c) An area committee may rescind or deny to any handler permission to handle potatoes pursuant to § 948.23 of this subpart if proof satisfactory to the committee is obtained that potatoes handled by him for a purpose stated in § 948.23 were handled contrary to the provisions of this subpart.

(d) The committee shall make reports to the Secretary, as requested, showing the number of applications

for such certificates, the quantity of potatoes covered by such applications, the number of such applications denied and certificates granted, the quantity of potatoes handled under duly issued certificates, and such other information as may be requested.

EXEMPTIONS

§ 948.28 Policy.

Any producer whose potatoes have been adversely affected by acts beyond the control or reasonable expectation of a prudent grower and who, by reason of any regulation issued pursuant to this part, is or will be prevented from shipping or having shipped during the then current marketing season, or a specific portion thereof, as large a proportion of his potato crop as the average proportion shipped or to be shipped during comparable portions of the season by all producers in his immediate area of production, may apply to the committee for exemptions from such regulations for the purpose of obtaining equitable treatment under such regulations.

§ 948.29 Procedure.

Rules and procedures for granting exemptions may be issued by the Secretary, upon recommendation of area committees. Such rules and procedures may provide for methods of determinations by area committees of average proportions of crops shipped or being shipped in respective areas or subdivisions thereof during any or all portions of a season, for processing applications for exemption, for issuing or denying certificates of exemption, for administrative compliance with certificates issued, for reports by handlers thereon, and for such other procedures as may be necessary to administration hereof.

§ 948.30 Granting exemptions.

An area committee may issue certificates of exemption to any qualified applicant who furnishes adequate evidence to such committee:

(a) That the grade, size, or quality of the applicant's potatoes have been adversely affected by acts beyond his control or reasonable expectations;

(b) That by reason of regulations issued pursuant to § 948.20 or § 948.22, the applicant will be prevented as a producer from shipping or having shipped as large a proportion of his production as the average proportion of production shipped by all producers in said applicant's immediate area of production during the season, or a specific portion thereof.

(c) Each such certificate issued shall permit the person identified therein to ship or have shipped the potatoes described thereon, and evidence of such certificates shall be made available to subsequent handlers thereof.

§ 948.31 Investigation.

An area committee shall be permitted at any time to make a thorough investigation of any applicant's claim pertaining to exemptions.

§ 948.32 Appeal.

If any applicant for exemption certificates is dissatisfied with the determination by an area committee with respect to his application, he may file an appeal with the committee. Any applicant filing an appeal shall furnish evidence satisfactory to the committee for a determination on the appeal.

RESEARCH AND DEVELOPMENT

§ 948.35 Research and development.

The committee, with the approval of the Secretary, may provide for the establishment of marketing research and development projects designed to assist, improve, or promote the marketing, distribution, and consumption of potatoes and may make available committee information and data to any person, or to any employee of an agency or its agent, authorized by the committee as its agent with the approval of the Secretary, to conduct such projects.

INSPECTION

§ 948.40 Inspection and certification.

(a) During any period in which the handling of potatoes is regulated pursuant to § 948.20 through § 948.24, inclusive, no handler shall handle potatoes unless such potatoes are inspected by an authorized representative of the

Federal or a Federal-State Inspection Service and are covered by a valid inspection certificate, except when relieved of such requirements by § 948.22(b), § 948.23, or § 948.40(b).

(b) Rules may be issued by the Secretary, upon recommendation of the Colorado Potato Committee requiring inspection on regraded, resorted or repacked lots, or providing for special inspection requirements or relief therefrom. Such rules may provide distinctions, insofar as practical, between handling at shipping point and handling in receiving markets within the production area.

(c) Upon recommendation of an area committee and approval by the Secretary, any or all potatoes so inspected and certified shall be identified by appropriate seals, stamps, or tags to be affixed to the containers by the handler under the direction and supervision of a Federal or Federal-State Inspector or the committee. Master containers may bear the identification instead of the individual containers within said master container.

(d) Insofar as the requirements of this section are concerned, the length of time for which an inspection certificate is valid may be established by the committee with the approval of the Secretary.

(e) When potatoes are inspected in accordance with the requirements of this section, a copy of each inspection certificate issued shall be made available to the committee by the inspection service.

(f) Area committees with the approval of the Colorado Potato Committee may recommend and the Secretary may require that no handler shall transport or cause the transportation of potatoes by motor vehicle or by other means unless such shipment is accompanied by a copy of the inspection certificate issued thereon, or other document authorized by the committee to indicate that such inspection has been performed. Such certificate or document shall be surrendered to such authority as may be designated.

Committees

§ 948.50 Area committees.

A committee is hereby established as an administrative agency for each area. Each area committee shall be comprised of members and alternates as set forth in this section or as reestablished by § 948.53.

(a) Area No. 1 (Western Slope): Four producers and three handlers selected as follows:

Two (2) producers and one (1) handler from the counties of Eagle, Garfield, Pitkin, Moffat, and Routt, in the State of Colorado;
Two (2) producers and one (1) handler from the remaining counties of Area No. 1;
One (1) handler representing all producers' cooperative marketing associations in Area No. 1.

(b) Area No. 2 (San Luis Valley): Seven producers and five handlers selected as follows:

Three (3) producers from Rio Grande County;
One (1) producer from Saguache County;
One (1) producer from Conejos County;
One (1) producer from Alamosa County;
One (1) producer from all other counties in Area No. 2;
Two (2) handlers representing all producers' cooperative marketing associations in Area No. 2;
Three (3) handlers representing handlers in Area No. 2 other than producers' cooperative marketing associations.

(c) Area No. 3: Five Producers and four handlers selected as follows:

Three (3) producers from Weld County;
One (1) producer from Morgan County;
One (1) producer from the remaining counties of Area No. 3;
Four (4) handlers from Area No. 3.

§ 948.51 Colorado Potato Committee.

The Colorado Potato Committee is hereby established consisting of six members, with alternates. Two members and alternates shall be selected from each area committee. Committeemen shall be selected by the Secretary from nominations of area committee members or alternates.

§ 948.52 Alternates.

(a) For each committee member there shall be an alternate who shall have the same qualifications. During a member's absence, or when called

upon to do so in accordance with the terms hereof, or in the event of a member's death, removal, resignation, or disqualification, an alternate shall act in his place and stead until the member's successor is selected and has qualified.

(b) Area committees, with the Secretary's approval, may provide through rules for members or for alternates to recommend regulations for early crop potatoes or for late crop potatoes and to specify the particular crop for which each group shall be responsible.

§ 948.53 Reestablishment.

Areas, subdivisions of areas, the distribution of representation among the subdivision of areas, or among marketing organizations within respective areas may be reestablished by the Secretary upon area committee recommendations. Upon approval therefor of respective committees affected thereby, areas may be reestablished. In recommending any such changes, the committee shall consider (a) the relative importance of new producing sections, (b) relative production, (c) changes in marketing organizations and their relative status in the industry, (d) the geographic locations of producing sections as they would affect the efficiency of administration of this part, and (e) other relevant factors.

§ 948.54 Eligibility.

Area committee members and alternates shall be individuals who shall be residents of, and producers or handlers, as the case may be, in the respective area. Also, each member or alternate to qualify as a representative (a) for producers shall be a producer, or an officer or employee of a producer; (b) for producer's cooperative marketing associations shall be members or employees of such associations; or (c) for handlers other than cooperative marketing associations shall be a handler, or an officer or employee of a handler.

§ 948.55 Term of office.

The term of office of each area committee member and alternate shall be for two years. The term of office for Colorado Potato Committee members and alternates shall be for one year. The dates on which terms of office for each committee shall begin and end shall be established by the Secretary pursuant to respective committee recommendation. Terms of office of area committee members shall be arranged so that approximately one-half shall terminate each year. Determination of which initial members and alternates shall serve for one year or two years shall be by lot.

§ 948.56 Nomination and selection.

(a) Each area committee shall hold or cause to be held, not less than 15 days prior to the expiration date of respective terms of office, meetings of producers and handlers for each subdivision in which terms expire or in which vacancies otherwise occur.

(b) At each such meeting one or more nominees shall be designated for each impending vacancy as member or alternate. Such designation may be by ballot or by motion at the option of those present in voting capacity.

(c) Only producers may participate in designating producer nominees; only handlers may participate in designating handler nominees; and only duly authorized representatives of producers' cooperative marketing associations may participate in designating nominees to represent such associations. If no separate representation is provided for producers' cooperative marketing associations, duly authorized representatives of such associations may participate in designating handler nominees.

(d) Each producers' cooperative marketing association shall be entitled to cast only one vote in designating nominees to represent such associations. Each producer and each handler shall be entitled to cast only one vote on behalf of himself, his agents, subsidiaries, affiliates, and representatives.

(e) If a producer, handler, or producers' cooperative marketing association is engaged in producing or handling potatoes in more than one area, or in more than one subdivision of an area, such producer, handler, or producers' cooperative marketing association shall elect the area or subdivision in which he may participate in designat-

ing nominees. In no event shall there be participation in more than one area or subdivision.

§ 948.57 Failure to nominate.

If nominations are not made pursuant to the provisions of § 948.56 by the date provided therein, the Secretary may, without regard to nominations, select members and alternates on the basis of the representation provided for in this part.

§ 948.58 Vacancies.

To fill any vacancy occasioned by the failure of any person selected as a member or as an alternate to qualify, or in the event of the death, removal, resignation, or disqualification of a member or alternate, a successor for his unexpired term may be selected by the Secretary from nominations made pursuant to § 948.56, from previously unselected nominees on the current nominee list, or from other eligible persons.

§ 948.59 Qualification.

Each person selected as a member or as an alternate shall qualify by promptly filing a written acceptance with the Secretary.

§ 948.60 Compensation and expenses.

(a) Members of each area committee and their alternates shall serve without salary, but may be compensated at a rate not in excess of $10 per day while engaged on committee business, and may be reimbursed for necessary expenses actually incurred while so engaged. At the discretion of an area committee, alternates may be requested to attend any or all committee meetings and receive compensation and expenses therefor regardless of attendance by the respective members.

(b) The compensation and expenses of members and alternates of the Colorado Potato Committee shall be paid by the respective area committee they represent.

(c) Such other expenses as may be incurred by the Colorado Potato Committee pursuant to a budget of expenses approved by the Secretary shall be allotted to, and paid by, one or more of the area committees, as may be specified in an order issued by the Secretary pursuant to the provisions of this subpart.

§ 948.61 Procedure.

(a) A majority of all members of a committee shall be necessary to constitute a quorum or to pass and motion or approve any committee action.

(b) Each committee may provide for the members thereof, including the alternate members when acting as members, to vote by mail, telegraph, telephone, or other means of communication, provided that any such vote cast orally shall be confirmed promptly in writing. If any assembled meeting is held all votes shall be cast in person.

§ 948.62 Powers.

Each committee shall have the following powers:

(a) To administer the provisions of this subpart as specified herein;

(b) To make rules and regulations to effectuate the terms and provisions of this subpart;

(c) To receive, investigate, and report to the Secretary complaints of violation of the provisions of this part; and

(d) To recommend to the Secretary amendments to this part.

§ 948.63 Duties.

(a) Each committee shall:

(1) Meet and organize as soon as practical after the beginning of each term of office, select a chairman and such other officers' as may be necessary, select subcommittees and adopt such rules and procedures for the conduct of its business as it may deem advisable;

(2) Act as intermediary between the Secretary and any producer or handler;

(3) Appoint such employees, agents and representatives as it may deem necessary and determine the salaries and define the duties of each;

(4) Keep minutes, books, and records which clearly reflect all its acts and transactions. Such minutes, books and records shall be subject to examination at any time by the Secretary;

(5) Furnish promptly notices of meetings, copies of the minutes of each committee meeting, and such

other reports or information as may be requested by the Secretary, including annual reports of each area committee's operations for the preceding marketing season or fiscal period;

(6) Make available to producers, and to other area committees and the Colorado Potato Committee the committee's voting record on recommended regulations and other matters of policy;

(7) Meet jointly with other area committees when requested to do so by the Colorado Potato Committee;

(8) Consult, cooperate, and exchange information with other area committees, with other marketing agreement committees and other agencies or individuals in connection with proper committee activities and objectives;

(9) Take any proper action necessary to carry out the provisions of this subpart; and

(10) Cause the books of the committee to be audited by a competent accountant at least once each fiscal period.

(b) The Colorado Potato Committee shall also:

(1) Supervise the regulation of shipments pursuant to the provisions of the general cull regulation in the absence of more restrictive regulations, and shall cooperate with any area committee in administering any regulation issued pursuant to this subpart;

(2) Make recommendations to the Secretary with respect to suspending or modifying the provisions of the general cull regulation;

(3) Make available to area committees its voting record on recommendations for modification of the cull regulation and other matters of policy;

(4) Submit to each area committee such available information as may be requested; and

(5) Call joint meetings of area committees on matters requiring consideration of statewide marketing policies when requested to do so by an area committee.

Expenses and Assessments

§ 948.75 Expenses.

Each area committee is authorized to incur such expenses as the Secretary may find are reasonable and likely to be incurred during each fiscal period for its maintenance and functioning, and for purposes determined to be appropriate for administration of this part. Handlers shall share expenses upon the basis of a fiscal period. Each handler's share of such expenses shall be proportionate to the ratio between the total quantity of potatoes handled by him as the first handler thereof during a fiscal period and the total quantity of potatoes handled by all handlers as first handlers thereof during such fiscal period.

§ 948.76 Budget.

As soon as practicable after the beginning of each fiscal period and as may be necessary thereafter, each area committee shall prepare an estimated budget of income and expenditures necessary for its administration of this part. Each area committee may recommend a rate of assessment calculated to provide adequate funds to defray its proposed expenditures. Each area committee shall present such budget to the Secretary with an accompanying report showing the basis for its calculations.

§ 948.77 Assessments.

(a) The funds to cover each area committee's expenses shall be acquired by the levying of assessments upon handlers as provided in this subpart. Each handler who first handles potatoes under this part, shall pay assessments to his respective area committee upon demand, which assessments shall be in payment of such handler's pro rata share of the area committee's expenses.

(b) Assessments shall be levied upon handlers at rates established by the Secretary. Such rates may be established upon the basis of each area committee's budget, recommendations, and other available information. Such rates may be applied to specified containers used in the production area.

(c) At any time during, or subsequent to, a given fiscal period each area committee may recommend the approval of an amended budget and an increase in the rate of assessment. Upon the basis of such recommendations, or other available information,

the Secretary may approve an amended budget and increase the rate of assessment. Such increase shall be applicable to all potatoes grown within the particular area where an area committee recommends such increase and which were handled by the first handler thereof during such fiscal period.

(d) The payment of assessments for the maintenance and functioning of each area committee may be required under this part throughout the period it is in effect irrespective to whether particular provisions thereof are suspended or become inoperative.

(e) In order to provide funds to enable each area committee to perform its functions under this part, handlers may make advance payment of assessments.

§ 948.78 Accounting.

(a) If, at the end of a fiscal period, the assessments collected are in excess of expenses incurred, such excess shall be accounted for in accordance with one of the following:

(1) If such excess is not retained in a reserve, as provided in paragraph (a)(2) of this section, it shall be refunded proportionately to the persons from whom it was collected.

(2) An area committee, with the approval of the Secretary, may carry over such excess into subsequent fiscal periods as a reserve: *Provided,* That funds already in the reserve are less than approximately two fiscal period's expenses. Such reserve funds may be used (i) to defray expenses, during any fiscal period, prior to the time assessment income is sufficient to cover such expenses; (ii) to cover deficits incurred during any fiscal period when assessment income is less than expenses; (iii) to defray expenses incurred during any period when any or all provisions of this subpart are suspended or are inoperative; (iv) to cover necessary expenses of liquidation in the event of termination of this subpart. Upon such termination, any funds not required to defray the necessary expenses of liquidation shall be disposed of in such manner as the Secretary may determine to be appropriate. To the extent practical, such funds shall be returned pro rata to the persons from whom such funds were collected.

(b) All funds received by an area committee pursuant to the provisions of this part shall be used solely for the purposes specified herein. The Secretary may at any time require an area committee and its members to account for all receipts and disbursements.

(c) Upon the removal or expiration of the term of office of any member of an area committee, such member shall account for all receipts and disbursements and deliver all property and funds in his possession to such committee, and shall execute such assignments and other instruments as may be necessary or appropriate to vest in such committee full title to all of the property funds and claims vested in such member pursuant to this part.

(d) Each area committee may make recommendations to the Secretary for one or more of the members thereof, or any other person, to act as a trustee for holding records, funds, or any other committee property during periods of suspension of this subpart, or during any period or periods when regulations are not in effect and if the Secretary determines such action appropriate, he may direct that such person or persons shall act as trustee or trustees for such committee.

Reports

§ 948.80 Reports.

Upon request of an area committee or of the Colorado Potato Committee through an area committee, each handler within the respective area of such area committee shall furnish to the area committee in such manner and at such time as it may prescribe, reports and other information as may be necessary for the committee to perform its duties under this part.

(a) Such reports may include, but are not necessarily limited to the following examples:

(1) The quantities of potatoes received by a handler during any or all periods of a season;

(2) The quantities disposed of by him, segregated as to quantities subject to regulation, and where necessary segregated as to types of outlets and special or modified regulations applicable to alternative outlets, and including quantities not subject to

grade, inspection, assessment, or other similar regulations;

(3) The date of each such disposition and the identification of the carrier transporting such potatoes;

(4) Information essential to identification of any or all specific quantities, lots, and disposition of potatoes handled under §§ 948.23 to 948.30, inclusive, which may include identification of inspection certificates, exemption certificates, certificates of privilege, or other appropriate identification, including the destination of each special shipment, where necessary.

(b) All such reports shall be held under appropriate protective classification and custody by the committee, or duly appointed employees thereof, so that the information contained therein which may adversely affect the competitive position of any handler in relation to other handlers will not be disclosed. Compilations of general reports from data submitted by handlers is authorized, subject to prohibition of disclosure of individual handlers' identities or operations.

(c) Each handler shall maintain for at least two succeeding years such records of the potatoes received and disposed of by such handler as may be necessary to verify the reports he submits to the committee pursuant to this section.

Compliance

§ 948.81 Compliance.

Except as provided in this subpart, no handler shall handle potatoes, the handling of which has been prohibited by the Secretary in accordance with provisions of this subpart, and no handler shall handle potatoes except in conformity to the provisions of this subpart.

Miscellaneous Provisions

§ 948.82 Right of the Secretary.

The members of each area committee (including successors and alternates) and any agent or employee appointed or employed by any committee shall be subject to removal or suspension by the Secretary at any time. Each and every order, regulation, decision, determination or other act of each committee shall be subject to the continuing right of the Secretary to disapprove of the same at any time. Upon such disapproval, the disapproved action of the said committee shall be deemed null and void, except as to acts done in reliance thereon or in compliance therewith prior to such disapproval by the Secretary.

§ 948.83 Effective time.

The provisions of this subpart or any amendments thereto shall become effective at such time as the Secretary may declare and shall continue in force until terminated in one of the ways specified in this subpart.

[25 FR 7092, July 27, 1960, as amended at 26 FR 11483, Dec. 5, 1961. Redesignated at 26 FR 12751, Dec. 30, 1961]

§ 948.84 Termination.

(a) The Secretary may at any time terminate any or all provisions of this subpart by giving at least one day's notice by means of a press release or in any other manner which he may determine.

(b) The Secretary may at any time terminate or suspend the operations of any or all of the provisions of this subpart whenever he finds that such provisions do not tend to effectuate the declared policy of the Act.

(c) The Secretary shall terminate the provisions of this subpart at the end of any fiscal period whenever he finds that such termination is favored by a majority of producers, who during a representative period, as determined by the Secretary have been engaged in the production of potatoes for market: *Provided*, That such majority has, during such representative period, produced for market more than fifty percent of the volume of such potatoes produced for market.

(d) The provisions of this subpart shall in any event terminate whenever the provisions of the Act authorizing them cease to be in effect.

[25 FR 7092, July 27, 1960, as amended at 26 FR 11483, Dec. 5, 1961. Redesignated at 26 FR 12751, Dec. 30, 1961]

§ 948.85 Proceedings after termination.

(a) Upon the termination of the provisions of this subpart the then func-

tioning members of each area committee shall continue as joint trustees for the purpose of liquidating the affairs of their respective area committee of all funds and property then in the possession of or under control of the committee, including claims for any funds unpaid or property not delivered at the time of such termination. Action by said trusteeship shall require the concurrence of a majority of the said trustees.

(b) The said trustees shall continue in such capacity until discharged by the Secretary; shall from time to time account for all receipts and disbursements and deliver all property on hand, together with all books and records of said committees and of the trustees, to such person as the Secretary may direct; and shall upon the request of the Secretary, execute such assignments or other instruments necessary or appropriate to vest in such person full title and right to all of the funds, property, and claims vested in said committee or the trustees pursuant to this subpart.

(c) Any person to whom funds, property, or claims have been transferred or delivered by an area committee or its members pursuant to this section shall be subject to the same obligations imposed upon the members of such committees and upon the said trustees.

§ 948.86 Effect of termination or amendment.

Unless otherwise expressly provided by the Secretary, the termination of this subpart or of any regulation issued pursuant to this subpart or the issuance of any amendments to either thereof, shall not (a) effect or waive any right, duty, obligation, or liability which shall have arisen or which may thereafter arise in connection with any provision of this subpart or any regulation issued under this subpart; or (b) release or extinguish any violation of this subpart or of any regulations issued under this subpart; or (c) affect or impair any rights or remedies of the Secretary or of any other person with respect to any such violations.

§ 948.87 Duration of immunities.

The benefits, privileges and immunities conferred upon any person by virtue of this subpart shall cease upon the termination of this subpart, except with respect to acts done under and during the existence of this subpart.

§ 948.88 Agents.

The Secretary may, by designation in writing, name any person, including any officer or employee of the United States or name any agency in the United States Department of Agriculture, to act as his agent or representative in connection with any of the provisions of this subpart.

§ 948.89 Derogation.

Nothing contained in this subpart is, or shall be construed to be, in derogation or in modification of the rights of the Secretary or of the United States to exercise any powers granted by the Act or otherwise, or in accordance with such powers, to act in the premises whenever such action is deemed advisable.

§ 948.90 Personal liability.

No member or alternate of any committee or any employee or agent thereof, shall be held personally responsible, either individually or jointly with others, in any way whatsoever, to any handler or to any person for errors in judgment, mistakes, or other acts, either of commission or omission, as such member, alternate, agent, or employee, except for acts of dishonesty, willful misconduct or gross negligence.

§ 948.91 Separability.

If any provision of this subpart is declared invalid or the applicability thereof to any person, circumstance or thing is held invalid, the validity of the remainder of this subpart, or the applicability thereof to any other person, circumstance or thing shall not be affected thereby.

§ 948.92 Amendments.

Amendments to this subpart may be proposed from time to time by a committee or by the Secretary.

Subpart—Rules and Regulations

General

Source: 26 FR 5219, June 10, 1961, unless otherwise noted. Redesignated at 26 FR 12751, Dec. 30, 1961.

§ 948.100 Order.

"Order" means §§ 948.1 to 948.92 (Order No. 948 as amended) regulating the handling of Irish potatoes grown in the State of Colorado.

§ 948.101 Terms.

The terms used in this subpart shall have the same meaning as when used in §§ 948.1 to 948.92.

§ 948.102 Communications.

Unless otherwise provided in §§ 948.1 to 948.92, or by specific direction of an area committee, all reports, applications, submittals, requests and communications in connection with the order shall be addressed to the office of the committee for the area in which the potatoes involved are grown.

§ 948.103 Fiscal period.

The fiscal periods for all three areas shall begin July 1 and end June 30, of the following year, both dates inclusive.

[35 FR 13281, Aug. 20, 1970]

§ 948.104 Term of office.

The two-year term of office for area committee members and alternates shall begin June 1 and end May 31 of the second year following; and the one-year term of office for Colorado Potato Committee members shall begin as of June 1 each year.

Safeguards

Source: Sections 948.120 through 948.126 appear at 26 FR 10792, Nov. 18, 1961, unless otherwise noted. Redesignated at 26 FR 12751, Dec. 30, 1961.

§ 948.120 General.

Whenever shipments of potatoes for special purposes under § 948.23 are relieved in whole or in part from grade and size regulations issued under § 948.22 the committee shall require information and evidence as to the manner, methods, and timing of such shipments as safeguards against the entry of any such potatoes into trade channels other than those for which intended. Such information and evidence shall include the requirements set forth below with respect to Certificates of Privilege.

§ 948.121 Qualification.

Before handling potatoes for special purposes which do not meet regulations issued under § 948.22 a handler must qualify with the committee to handle shipments for special purposes. To qualify he must (a) apply for and receive a Certificate of Privilege indicating his intent to so handle potatoes; (b) agree to comply with reporting and other requirements set forth in §§ 948.121 to 948.125, inclusive, with respect to such shipments; and (c) receive approval of the committee to so handle potatoes. Such approval will be based upon evidence furnished in his application for a Certificate of Privilege, and other information available to the committee.

§ 948.122 Application.

(a) Application for Certificate of Privilege shall be made in person, by telephone, or on forms furnished by the committee. Each application may contain, but need not be limited to, the name and address of the handler; the quantity by grade, size, quality and variety of the potatoes to be shipped; the mode of transportation; the consignee; the destination; the purpose for which the potatoes are to be used; a certification to the United States Department of Agriculture and to the committee as to the truthfulness of the information shown thereon; and any other appropriate information or documents deemed necessary by the committee for the purposes stated in § 948.120.

§ 948.123 Approval.

The committee or its duly authorized agents shall give prompt consideration to each application for a Certificate of Privilege. Approval of an application based upon a determination as to whether the information contained therein and other information available to the committee supports ap-

proval, shall be evidenced by the issuance of a Certificate of Privilege to the applicant. Each certificate shall cover a specified period, and specified qualities and quantities of potatoes to be sold or transported to the designated consignee for the purposes declared.

§ 948.124 Reports.

Each handler of potatoes shipping under Certificates of Privilege shall supply the committee with reports as requested by the committee or its duly authorized agents showing the name and address of the shipper; the car or truck identification; the loading point; destination; consignee; the inspection certificate number when inspection is required; and any other information deemed necessary by the committee.

§ 948.125 Disqualification.

The committee from time to time may conduct surveys of handling of potatoes for special purposes requiring Certificates of Privilege to determine whether handlers are complying with the requirements and regulations applicable to such certificates. Whenever the committee finds that a handler or consignee is failing to comply with requirements and regulations applicable to handling of potatoes in special outlets, and requiring such certificates, a Certificate or Certificates of Privilege issued such handler may be rescinded and further certificates denied. Such disqualification shall apply to, and not exceed, a reasonable period of time as determined by the committee but in no event shall it extend beyond the end of the succeeding fiscal period. Any handler who has a certificate rescinded or denied may appeal to the committee in writing for reconsideration of his disqualification.

§ 948.126 General cull regulation.

(a) No handler shall handle potatoes grown in the State of Colorado which do not meet the requirements of U.S. No. 2 or better grade, or are less than 1½ inches in diameter.

(b) This General Cull Regulation shall remain in effect until suspended or modified pursuant to § 948.20(a)(2).

(c) The term U.S. No. 2 grade has the same meaning as when used in the U.S. Standards for Potatoes (§§ 51.1540 to 51.1556 of this title), or amendments thereto or modifications thereof.

(d) Applicability to imports: Pursuant to section 608e–1 of the act and § 980.1 *Import Regulations; Irish potatoes* (Part 980 of this chapter), in the absence of more restrictive regulations in effect for potatoes grown in Areas Nos. 2 and 3 in Colorado, this cull regulation shall be used in a basis for import regulations for the red skinned, round type and for other round type potatoes, during the periods specified and as designated in said § 980.1 of this chapter.

[35 FR 11988, July 25, 1970]

Exemptions

Source: Sections 948.130 through 948.132 appear at 26 FR 10793, Nov. 18, 1961, unless otherwise noted. Redesignated at 26 FR 12751, Dec. 30, 1961.

§ 948.130 Application for exemption certificates.

Any producer applying for exemption from any grade and size regulation issued under § 948.22 shall make application to the respective area committee for the area in which the applicant's potatoes were grown or are stored, on forms to be furnished by the area committee. The application shall include:

(a) The name and address of the applicant;

(b) The location, or locations, of the potatoes with respect to which exemption is requested;

(c) The total estimated quantity of potatoes (excluding culls) produced by the applicant during the current season, stated in hundredweights, by varieties, grades, and sizes;

(d) The estimated percentage of the applicant's potato crop (excluding culls) which cannot be shipped because of grade and size regulations then in effect and the acts beyond his control or reasonable expectation adversely affecting his potatoes;

(e) The quantity of potatoes of each variety (excluding culls) which has already been sold or otherwise shipped during the current season;

(f) The signature of the applicant and certification that the statements given in the application are true and correct; and

(g) Such additional information as the area committee may find necessary in making a determination regarding the granting of an exemption certificate.

§ 948.131 Federal-State inspection reports.

Each application for exemption shall be accompanied by a written report of a Federal-State Inspector, which shall contain the following:

(a) A statement by the inspector that he personally inspected the potatoes with respect to which exemption is requested, and that he took a representative sample of such potatoes;

(b) A statement of the percentage of the potatoes (excluding culls) which fail to meet the requirements of the grade and size regulations then in effect;

(c) A statement of the defects or damage causing the potatoes to fail to meet grade and size requirements then in effect.

In the event that more than one variety of potatoes is being regulated the above percentage shall be determined separately for each variety of the applicant's potatoes. The cost of Federal-State inspection and report shall be borne by the applicant for exemption.

§ 948.132 Issuance of exemption certificates.

(a) The respective area committee receiving an application for exemption shall give prompt consideration thereto and determine on the basis of the statements and facts therein contained and the factors set forth in § 948.30 whether the application may be approved. The determination, if favorable, shall be evidenced by the issuance of a certificate of exemption pursuant to §§ 948.28 through 948.32. If the applicant's request for exemption is denied, he shall be so notified in writing.

(b) Each certificate of exemption issued as provided in this subpart, shall contain the name and address of the applicant, the location of his farm or ranch, the location, or locations, of all potatoes remaining to be shipped, the total quantity of potatoes which may be shipped under the certificate of exemption, and such other information as the area committee may deem desirable.

(c) The committee may furnish each applicant receiving a certificate of exemption with appropriate subcertificates of exemption to identify each lot of exempted potatoes and a subcertificate shall be transferable with the lot of potatoes to which it applies. Each applicant receiving a certificate of exemption shall report each shipment of potatoes made under such certificate to the respective area committee issuing the certificate. The report shall state the name and address of the person to whom the potatoes were sold, the quantity sold, the date of transfer, and such other information as the committee may request.

Subpart—Accounting and Collections

§ 948.200 Accounting and collections.

(a) Each handler's assessment account with Area No. 2 (San Luis Valley) Committee shall become due and payable upon presentation of a statement thereof to such handler.

(b) If settlement of such an assessment account is not completed on or before the 20th day following presentation of a statement of such account, each handler failing to so complete settlement of his account may be declared delinquent by said area committee.

(c) The name of each person who is declared delinquent may be forwarded to the Secretary and, in addition, the names of persons declared delinquent pursuant to paragraph (b) of this section may be publicized by said area committee.

(d) Terms used in this section shall have the same meaning as when used in Marketing Agreement No. 97 and Order No. 948 (§§ 948.1 to 948.92).

[19 FR 8647, Dec. 17, 1954. Redesignated at 26 FR 12751, Dec. 30, 1961]

NOTE: After January 1, 1979, "Budget of Expenses and Rate of Assessment" regulations (e.g., sections .201 through .299) and "Handling" regulations (e.g. sections .300 through .399) which are in effect for a year or less, will not be carried in the Code of

Federal Regulations. For the FEDERAL REGISTER citations affecting these regulations, see the "List of CFR Sections Affected" in this volume.

PART 950—IRISH POTATOES GROWN IN MAINE

Subpart—Order Regulating Handling

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AUTHORITY: Secs. 1-19, 48 Stat. 31, as amended; 7 U.S.C. 601-674.

Subpart—Order Regulating Handling

SOURCE: 27 FR 5944, June 23, 1962, unless otherwise noted.

DEFINITIONS

§ 950.1 Secretary.

"Secretary" means the Secretary of Agriculture of the United States or any officer or employee of the United States Department of Agriculture to whom authority has heretofore been delegated, or to whom authority may hereafter be delegated, to act in his stead.

§ 950.2 Act.

"Act" means Public Act No. 10, 73d Congress, as amended and as reenacted and amended by the Agricultural Marketing Agreement Act of 1937, as amended (48 Stat. 31, as amended; 7 U.S.C. 601 et seq.).

§ 950.3 Person.

"Person" means an individual, partnership, corporation, association, or any other business unit.

§ 950.4 Production area.

"Production area" means all territory included within the boundaries of the State of Maine.

§ 950.5 Potatoes.

"Potatoes" means all varieties of Irish potatoes grown within the production area.

§ 950.6 Handler.

"Handler" is synonymous with "shipper" and means any person (except a common or contract carrier of potatoes owned by another person) who ships potatoes or causes potatoes to be shipped.

§ 950.7 Ship or handle.

"Ship" or "handle" means to sell or transport potatoes within the production area or between the production area, and any point outside thereof, or between points outside the production area.

§ 950.8 Grading.

"Grading" is synonymous with "preparation for market" and means the sorting or separation of potatoes into grades and sizes for market purposes.

§ 950.9 Grade and size.

"Grade" means any one of the officially established grades of potatoes and "size" means any one of the officially established sizes of potatoes, as defined and set forth in:

(a) The United States Standards for Potatoes issued by the United States Department of Agriculture (§§ 51.1540 to 51.1559 of this title) or amendments thereto, or modification thereof, or variations based thereon:

(b) United States Consumer Standards for Potatoes issued by the United States Department of Agriculture (§§ 51.1575 to 51.1587 of this title) or amendments thereto, or modifications thereof, or variations based thereon;

(c) State of Maine Standards for Potatoes issued by the State of Maine Commissioner of Agriculture, or amendments thereto, or modifications thereof, or variations based thereon.

§ 950.10 Producer.

"Producer" means any person engaged in the production of potatoes for market.

§ 950.11 Committee.

"Committee" means the Maine Potato Marketing Committee established pursuant to § 950.25.

§ 950.12 Fiscal period.

"Fiscal period" means the period beginning and ending on the dates approved by the Secretary pursuant to recommendations by the committee.

§ 950.13 Varieties.

"Varieties" means and includes all classifications or subdivisions of Irish potatoes according to those definitive characteristics now or hereafter recognized by the United States Department of Agriculture.

§ 950.14 Seed potatoes.

"Seed potatoes" is synonymous with "seed" and means and includes all po-

tatoes officially certified and tagged, marked or otherwise appropriately identified under the supervision of the official seed potato certifying agency of the State of Maine or other seed certification agencies which the Secretary may recognize.

§ 950.15 Table stock potatoes.

"Table stock potatoes" is synonymous with "table stock" and means and includes all potatoes not included within the definition of "seed potatoes."

§ 950.16 Pack.

"Pack" means a quantity of potatoes specified by weight, grade, size, or numerical limits, or by type of container or any combination of these, recommended by the committee and approved by the Secretary.

§ 950.17 Export.

"Export" means shipment of potatoes beyond the boundaries of continental United States.

§ 950.18 District.

"District" means each one of the geographical divisions of the production area initially established pursuant to § 950.28 or as reestablished pursuant to § 950.29.

§ 950.19 Container.

"Container" means a sack, bag, crate, box, basket, barrel, or bulk load or any other unit used in packaging, transportation, or sale of potatoes.

§ 950.20 Label.

"Label" means to mark, brand, or otherwise designate on containers the grade or size, or both of potatoes therein.

§ 950.21 Maturity.

"Maturity" means the stage of development or condition of the outer skin (epidermis) of the potato determined according to skinning classifications defined by the United States Standards for Potatoes (§§ 51.1540 to 51.1559, inclusive, of this title).

Committee

§ 950.25 Establishment and membership.

The Maine Potato Marketing Committee, consisting of 20 members, 15 of whom shall be producers and 5 shall be handlers, is hereby established.

§ 950.26 Selection.

Committee members shall be selected on the basis of districts as established in § 950.28 or § 950.29. From each district, three producers shall be selected as committee members and one producer shall be selected as committee alternate. From each district one handler shall be selected as member and one handler shall be selected as alternate.

§ 950.27 Qualifications for committee membership.

Persons selected as committee members or alternates to represent producers shall be individuals who are producers in the respective district for which selected or officers or employees of a corporate producer in such district, and such persons shall be residents of the respective district for which selected. Persons selected as committee members or alternates to represent handlers shall be individuals who are handlers in the district for which selected, or officers or employees of a corporate handler, and such persons shall be residents of the district for which selected.

§ 950.28 Districts.

For the purpose of determining the basis for selecting committee members, the following districts of the production area are hereby initially established:

District No. 1. The towns of Hamlin and Cyr, township 17, Range 3, townships 16 and 17, Range 4, townships 14, 15, and 16, Range 5, all townships 14, Ranges 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, and 16, and all area north thereof in Aroostook County, in the State of Maine.

District No. 2. The towns of Fort Fairfield, Caribou, Washburn, Wade, Perham, Woodland, Limestone, Caswell, Connor, New Sweden, Westmanland and Stockholm in Aroostook County, in the State of Maine.

District No. 3. The town of Bridgewater, township D, Range 2, all townships 9, ranges 3, 4, and 5, the town of Oxbow, all townships 9, ranges 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, and 18, and all area north thereof, not included in Districts 1 and 2, in the State of Maine.

District No. 4. The towns of Orient, Haynesville and Glenwood, township 2, Range 2, the towns of Silver Ridge and Benedicta, all townships 2, ranges 6, 7, 8, west of the east line of the State 9, 10, 11, 12, townships 2, 3, and 4, Range 13, townships 4 and 5, Range 14, all townships 5, ranges 15, 16, 17, 18, 19, and 20, and all area north thereof, not included in Districts 1, 2, and 3, in the State of Maine.

District No. 5. All the remaining counties, towns, and townships in the State of Maine not included in Districts 1, 2, 3, and 4.

§ 950.29 Redistricting.

The committee may recommend, and pursuant thereto, the Secretary may approve, the apportionment of members among districts, and the reestablishment of districts within the production area. In recommending any such changes the committee shall give consideration to: (a) Shifts in potato acreage within districts and within the production area during recent years; (b) the importance of new production in its relation to existing districts; (c) the equitable relationship of committee membership and districts; (d) economies to result for producers in promoting efficient administration due to redistricting or reapportionment of members within districts; and (e) other relevant factors. No change in districting or in reapportionment of members within districts may become effective within less than 30 days prior to the date on which terms of office begin each year and no recommendations for such redistricting or reapportionment may be made less than six months prior to such date.

§ 950.30 Term of office.

(a) The terms of office shall begin as of July 1 and end as of June 30. The term of office of producer members shall be for three years. The term of office of the producer members of the initial committee shall be so determined by the Secretary that one-third shall be for term of one year, one-third for term of two years, and one-third for term of three years. The term of office of alternate producer members and of handler members and alternates shall be for one year. No producer member and no handler member shall serve for more than three consecutive years.

(b) Committee members and alternates shall serve during the term of office for which they have been selected and have qualified, or during that portion thereof beginning on the date on which they qualify during such term of office and continuing until the end thereof, and until their successors are selected and have qualified.

§ 950.31 Nomination.

The Secretary may select the committee members and alternates from nominations which may be made in the following manner:

(a) The committee shall hold or cause to be held prior to May 1 of each year a meeting or meetings of producers in each district and a meeting or meetings of handlers shall be held in the production area to nominate members and alternates for the committee;

(b) In arranging for such meetings the committee may, if it deems desirable, utilize the services and facilities of existing organizations and agencies;

(c) At each such meeting at least one nominee shall be designated for each position as member and for each position as alternate member on the committee and eligible voters may ballot to indicate the ranking of their choice for each nominee;

(d) Nominations for committee members and alternates, shall be supplied to the Secretary in such manner and form as he may prescribe, not later than June 1 of each year;

(e) Only producers may participate in designating nominees for producer members and alternates and only handlers may participate in designating nominees for handler members and alternates. Each person who is both a producer and a handler may vote either as a producer or as a handler and he may elect the group in which he votes. In the event a person is engaged in producing or in handling potatoes in more than one district, such person shall elect the district within

which he may participate as aforesaid in designating nominees;

(f) Regardless of the number of districts in which a person produces or handles potatoes, each such person is entitled to cast only one vote on behalf of himself, his agents, subsidiaries, affiliates, and representatives in designating nominees for committee members and alternates. An eligible voter's privilege of casting only one vote as aforesaid shall be construed to permit a voter to cast one vote for each position to be filled from the group in the respective district in which he elects to vote.

§ 950.32 Failure to nominate.

If nominations are not made within the time and in the manner specified in § 950.31, the Secretary may, without regard to nominations, select the committee members and alternates, which selection shall be on the basis of the representation provided for in §§ 950.26 through 950.29, inclusive.

§ 950.33 Acceptance.

Any person selected as a committee member or alternate shall qualify by filing a written acceptance with the Secretary within ten days after being notified of such selection.

§ 950.34 Vacancies.

To fill committee vacancies, the Secretary may select such members or alternates from unselected nominees on the current nominee list from the district involved, or from nominations made in the manner specified in § 950.31. If the names of nominees to fill any such vacancy are not made available to the Secretary within 30 days after such vacancy occurs, such vacancy may be filled without regard to nominations, which selection shall be made on the basis of the representation provided for in §§ 950.26 through 950.29 inclusive.

§ 950.35 Alternate members.

In the event any member of the committee is unable to attend a meeting of the committee, the alternate, who was selected from the same district and from the same group as the absent member may act in the place and stead of the absent member. In the event of the death, removal, resignation, or disqualification of a member, a qualified alternate shall act for him until a successor of such member is selected and has qualified.

§ 950.36 Procedure.

(a) A majority of the members of the committee from each of at least four districts shall be necessary to constitute a quorum and a majority of concurring votes of the entire membership of such committee will be required to pass any motion or approve any committee action.

(b) The committee may provide for meeting by telephone, telegraph, or other means of communication and any vote cast at such a meeting shall be confirmed promptly in writing; *Provided,* That if any assembled meeting is held, all votes shall be cast in person.

§ 950.37 Expenses and compensation.

Committee members and alternates shall be reimbursed for expenses necessarily incurred by them in the performance of duties and in the exercise of powers under this part. Committee members and alternates may receive compensation for official services rendered in connection with administration of this part and such compensation shall not be in excess of rates recommended by the committee and approved by the Secretary.

§ 950.38 Powers.

The committee shall have the following powers:

(a) To administer the provisions of this part in accordance with its terms;

(b) To make rules and regulations to effectuate the terms and provisions of this part;

(c) To receive, investigate, and report to the Secretary complaints of violation of the provisions of this part; and

(d) To recommend to the Secretary amendments to this part.

§ 950.39 Duties.

It shall be the duty of the committee:

(a) To meet prior to the beginning of the marketing season each year, to or-

ganize, to select from among its membership a chairman and such other officers as may be necessary, and to adopt such rules and regulations for the conduct of its business as it may deem advisable;

(b) To prepare a marketing policy;

(c) To recommend marketing regulations to the Secretary;

(d) To recommend rules and procedures for, and to make determinations in connection with, issuance of certificates of privilege or exemptions, or both;

(e) To establish a subcommittee or subcommittees whose duties, assigned by the committee, may include, but shall not be limited to, any of the following duties of the committee;

(f) To consult, cooperate, and exchange information with other marketing order committees and other individuals or agencies, and to cooperate, and exchange information, in connection with all proper activities and objectives of such committees under this part;

(g) To act as intermediary between the Secretary and any producer or handler;

(h) To furnish to the Secretary such available information as he may request;

(i) To appoint such employees, agents, and representatives as it may deem necessary and to determine the salaries and define the duties of each such person;

(j) To investigate from time to time and to assemble data on the growing, harvesting, shipping, and marketing conditions with respect to potatoes, as may be necessary for administration of this part;

(k) To keep minutes, books, and records which clearly reflect all of the acts and transactions of the committee and such minutes, books, and records shall be subject to examination at any time by the Secretary or his authorized agent or representative;

(l) To make available to producers and handlers committee voting records on recommended regulations and on other matters of policy;

(m) At the beginning of each fiscal period, and as may be requested by the Secretary, to prepare a budget of its expenses and a proposed rate or rates of assessment for such fiscal period, together with a report thereon;

(n) To cause the books of the committee to be audited by a competent accountant at least once each year, and at such other time as such committee may deem necessary or as the Secretary may request. The report of such audit shall show the receipt and expenditure of funds collected pursuant to this part; a copy of each such report shall be furnished to the Secretary and a copy of each such report shall be made available at the principal office of such committee for inspection by producers and handlers; and

(o) To investigate an applicant's claim for exemption under § 950.70.

Expenses and Assessments

§ 950.43 Expenses.

The committee is authorized to incur such expenses as the Secretary may find are reasonable and likely to be incurred during each fiscal period for its maintenance and functioning, and for such purposes as the Secretary, pursuant to this subpart determines to be appropriate. Handlers shall share expenses on the basis of a fiscal period. Each handler's share of such expense shall be proportionate to the ratio between the total quantity of potatoes under regulation handled by the first handler thereof during a fiscal period and the total quantity of potatoes under regulation handled by all handlers as first handlers thereof during such fiscal period.

§ 950.44 Budget.

As soon as practicable after the beginning of each fiscal period and as may be necessary thereafter, the committee shall prepare an estimated budget of income and expenditures necessary for the administration of this part. The committee may recommend a rate of assessment calculated to provide adequate funds to defray its proposed expenditures. The committee shall present such budget to the Secretary with an accompanying report showing the basis for its calculations.

§ 950.45 Assessments.

(a) The funds to cover such expenses shall be acquired by the levying of assessments upon handlers as provided in this subpart. Each handler who first ships potatoes shall pay assessments to the committee upon demand, which assessments shall be in payment of such handler's pro rata share of the agencies' expenses.

(b) Assessments shall be levied upon handlers at rates established by the Secretary. Such rates may be established upon the basis of the committee's recommendations and other available information. Such rates may be applied equitably to each pack or unit.

(c) At any time during, or subsequent to, a given fiscal period the committee may recommend the approval of an amended budget and an increase in the rate of assessment. Upon the basis of such recommendations, or other available information, the Secretary may approve an amended budget and increase the rate of assessment. Such increase shall be applicable to all potatoes which were regulated under this part and which were shipped by the first handler thereof during such fiscal period.

§ 950.46 Accounting.

(a) All funds received by the committee pursuant to the provisions of this subpart shall be used solely for the purposes specified in this part.

(b) The Secretary may at any time require the committee, its members and alternates, employees, agents, and all other persons to account for all receipts and disbursements, funds, property, or records for which they are responsible. Whenever any person ceases to be a member or alternate of the committee he shall account for all receipts, disbursements, funds, and property (including but not being limited to books and other records) pertaining to such committee activities for which he is responsible, and shall execute such assignments and other instruments as may be necessary or appropriate to vest in such successor, agency, or person designated by the Secretary, the right to all of such property and funds and all claims vested in such person.

(c) The committee may make recommendations to the Secretary for one or more of the members thereof, or any other person, to act as a trustee for holding records, funds, or any other property of the committee during periods when regulations are not in effect and, if the Secretary determines such action appropriate, he may direct that such person or persons shall act as trustee or trustees for the committee.

§ 950.47 Refunds.

At the end of each fiscal period, if assessments collected are in excess of expenses incurred such excess shall be accounted for as follows:

(a) Except as provided in paragraphs (b) and (c) of this section, each person entitled to a proportionate refund of any excess assessment shall be credited with such refund against the operation of the following fiscal period unless such person demands repayment thereof, in which event it shall be paid to him. Refunds need not be paid or credited to any handler with outstanding obligations due the committee until his account is settled.

(b) The committee, with the approval of the Secretary, may establish and maintain during one or more fiscal years an operating monetary reserve in an amount not to exceed approximately one fiscal period's operational expenses. Upon approval of the Secretary, funds in such reserve shall be available for use by the committee for all expenses authorized pursuant to § 950.43.

(c) Upon termination of this part, any funds not required to defray the necessary expenses of liquidation shall be disposed of in such manner as the Secretary may determine to be appropriate: *Provided*, That to the extent practical, such funds shall be returned pro rata to the persons from whom such funds were collected.

REGULATIONS

§ 950.50 Marketing policy.

(a) At the beginning of each season, and as the Secretary may require, the committee shall prepare a marketing policy statement. Such policy statement shall indicate the data on potato supplies and demand on which the

committee bases its judgments and recommendations. It shall indicate also the kind or types of regulations contemplated during the ensuing season, and, to the extent practical, shall include recommendations for specific regulations. Notice of such marketing policy shall be given to producers, handlers, and other interested parties by bulletins, newspapers, or other appropriate media, and copies thereof shall be submitted to the Secretary and shall be available generally.

(b) Marketing policy statements relating to recommendations for regulations shall give appropriate consideration to potato supplies for the remainder of the season, with special consideration to:

(1) Estimates of total supplies including grade, size, and quality thereof, in the production area;

(2) Estimates of supplies in competing areas;

(3) Market prices by grades, sizes, containers, and packs;

(4) Estimates of supplies of competing commodities;

(5) Anticipated marketing problems;

(6) Level and trend of consumer income; and

(7) Other relevant factors.

§ 950.51 Recommendations for regulations.

Upon complying with the requirements of § 950.50, the committee may recommend regulations to the Secretary whenever it finds that such regulations as are provided for in this subpart will tend to effectuate the declared policy of the Act.

§ 950.52 Issuance of regulations.

(a) The Secretary shall limit by regulation the handling of potatoes whenever he finds from the recommendations and information submitted by the committee, or from other available information, that such regulations would tend to effectuate the declared policy of the Act.

(b) Such regulations may:

(1) Limit in any or all portions of the production area, the handling of particular grades, sizes, qualities, maturities, or packs, or any combination thereof, of any or all varieties of tablestock or of seed potatoes, or both, during any period; or

(2) Limit the handling of particular grades, sizes, or qualities, of potatoes differently, for different varieties, for tablestock or seed, for different portions of the production area, for different markets, for different packs, for different sizes and types of containers, or for any combination of the foregoing, during any period;

(3) Require that containers for potatoes handled hereunder shall be labeled to show the grade or size, or both, thereof;

(4) Fix the size, capacity, weight, dimensions, or pack of the container, or containers, which may be used in the packaging or handling of potatoes; or

(5) Limit the handling of potatoes when parity prices have been established, by establishing and maintaining minimum standards of quality and maturity in terms of grades or sizes.

§ 950.53 Handling for special purposes.

Upon the basis of recommendation and information submitted by the committee, or other available information, the Secretary shall modify, suspend, or terminate regulations issued pursuant to §§ 950.45, 950.52, 950.53, 950.65, or any combination thereof, in order to facilitate shipments of potatoes for the following purposes whenever he finds that it will tend to effectuate the declared policy of the Act;

(a) For grading or storage within the production area;

(b) For planting within the production area;

(c) For export;

(d) For distribution by the Federal Government;

(e) For manufacture or conversion into specified products;

(f) For charitable purposes;

(g) For livestock feed;

(h) For chipping; and

(i) For other purposes which may be specified.

§ 950.54 Minimum quantity regulation.

The committee, with the approval of the Secretary, may establish for any or all portions of the production area, minimum quantities below which shipments will be free from regulations

issued pursuant to §§ 950.45, 950.52, 950.53, 950.65, or any combination thereof.

§ 950.55 Notification of regulation.

The Secretary shall notify the committee of any regulations issued or of any modification, suspension, or termination thereof. The committee shall give reasonable notice thereof to handlers.

§ 950.56 Safeguards.

(a) The committee, with the approval of the Secretary, may prescribe adequate safeguards to prevent shipments pursuant to § 950.53 or § 950.54 from entering channels of trade for other than the specific purpose authorized therefor, and rules governing the issuance and the contents of Certificates of Privilege if such certificates are prescribed as safeguards by the committee. Such safeguards may include requirements that:

(1) Handlers shall file applications with the committee to ship potatoes pursuant to §§ 950.53 and 950.54;

(2) Handlers shall obtain inspection provided by § 950.65, or pay the pro rata share of expenses provided by § 950.45, or both, in connection with potato shipments affected under the provisions of § 950.53: *Provided*, That such inspection or payment of expenses may be required at different times than otherwise specified by the aforesaid sections; and

(3) Handlers shall obtain Certificates of Privilege from the committee for shipments of potatoes affected or to be affected under the provisions of §§ 950.53 and 950.54.

(b) The committee may rescind or deny Certificates of Privilege to any shipper if proof is obtained that potatoes shipped by him for the purposes stated in §§ 950.53 and 950.54 were handled contrary to the provisions of this part.

(c) The Secretary shall have the right to modify, change, alter, or rescind any safeguards prescribed and any certificates issued by the committee pursuant to the provisions of this section.

(d) The committee shall make reports to the Secretary, as requested, showing the number of applications for such certificates, the quantity of potatoes covered by such applications, the number of such applications denied and certificates granted, the quantity of potatoes shipped under duly issued certificates, and such other information as may be requested.

INSPECTION

§ 950.65 Inspection and certification.

(a) During any period in which shipments of potatoes are regulated pursuant to §§ 950.45, 950.52, or 950.53, or any combination thereof, or during any period recommended by the committee and approved by the Secretary, no handler shall ship potatoes unless each such shipment is inspected by an authorized representative of the Federal-State Inspection Service, or such other inspection service as the Secretary shall designate, except when relieved from such requirements pursuant to § 950.53 or § 950.54, or both.

(b) Regrading, resorting, or repacking any lot of potatoes shall invalidate any prior inspection certificates insofar as the requirements of this section are concerned. No handler shall ship potatoes after they have been regraded, resorted, repacked, or in any other way further prepared for market, unless each shipment of such potatoes is inspected by an authorized representative of the Federal-State Inspection Service, or such other inspection service as the Secretary shall designate.

(c) Insofar as the requirements of this section are concerned, the length of time for which an inspection certificate is valid may be established by the committee with the approval of the Secretary.

(d) When potatoes are inspected in accordance with the requirements of this section, a copy of each inspection certificate issued shall be made available to the committee by the inspection service.

(e) The committee may recommend and the Secretary may require that no handler shall transport or cause the transportation of potatoes by motor vehicle or by other means unless such shipment is accompanied by a copy of the inspection certificate issued there-

on, which certificate shall be surrendered to such authority as may be designated.

(f) Upon recommendation of the committee, and approval of the Secretary, all potatoes inspected and certified shall be identified by appropriate seals, stamps, or tags to be affixed to the container by the handler under rules to be established by the committee.

EXEMPTION

§ 950.70 Policy.

(a) Any producer whose potatoes have been adversely affected by acts beyond his control or by acts beyond reasonable expectation and who, by reason of any regulation issued pursuant to § 950.52, is prevented from shipping during the season, or a specific portion thereof, as large a proportion of his potato crop as the average proportion shipped or to be shipped during comparable portions of the season by all producers in his immediate area of production, may apply to the committee for exemptions from such regulations for the purpose of obtaining equitable treatment under such regulations.

(b) Any handler who has storage holdings of ungraded potatoes acquired during or immediately following the digging season that have been adversely affected by acts beyond the handler's control or by acts beyond reasonable expectation and who, by reason of any regulation issued pursuant to § 950.52 is prevented from shipping as large a proportion of his storage holdings of ungraded potatoes as the average proportion of ungraded storage holdings shipped by all handlers in said handler's immediate shipping area, may apply to the committee for exemptions from such regulations for the purpose of obtaining equitable treatment under such regulations.

§ 950.71 Rules and procedures.

The committee may adopt, with approval of the Secretary, the rules and procedures for handling exemptions. Such rules and procedures should provide for handling applications for exemptions, for issuing certificates of exemption, for committee determinations with respect to areas and averages (as required by § 950.70), and for such other procedures as may be necessary to accomplish policies with respect to exemptions.

§ 950.72 Applications and issuance.

The committee may issue certificates of exemption to any qualified applicant who furnishes adequate evidence to such committee:

(a) That the grade, size, or quality of the applicant's potatoes have been adversely affected by acts beyond the applicant's control and by acts beyond reasonable expectation;

(b) That by reason of regulations issued pursuant to § 950.52 in case of an applicant who is a producer, he will be prevented from shipping as large a proportion of his production as the average proportion of production shipped by all producers in said applicant's immediate area of production during the season, or a specific portion thereof;

(c) That by reason of regulations issued pursuant to § 950.52, in case of an applicant who is a handler who has storage holdings of ungraded potatoes acquired during or immediately following the digging season, he will be prevented from shipping as large a proportion of such storage holdings as the average proportion of similar storage holdings shipped by all handlers in said applicant's immediate shipping area during the season;

(d) Each certificate shall permit the recipient thereof to ship the potatoes described thereon, and evidence of such certificates shall be made available to subsequent handlers thereof.

§ 950.73 Investigation.

The committee shall be permitted at any time to make a thorough investigation of any applicant's claim pertaining to exemptions.

§ 950.74 Appeals.

If any applicant for exemption certificate is dissatisfied with the determination with respect to his application, said applicant may file an appeal with the committee. Such an appeal must be taken promptly after the determination from which the appeal is

taken. Any applicant filing an appeal shall furnish evidence satisfactory to such committee for a determination on the appeal. The committee shall thereupon reconsider the application, examine all available evidence, and make a final determination concerning the application. The committee shall notify the appellant of the final determination, and shall furnish the Secretary with a copy of the appeal and a statement of considerations involved in making the final determination.

§ 950.75 Records.

The committee shall maintain a record of all applications submitted for exemption certificates, a record of all exemption certificates issued and denied, the the quantity of potatoes covered by such exemption certificates, a record of the amount of potatoes shipped under exemption certificates, a record of appeals for reconsideration of applications, and such other information as may be requested by the Secretary. Periodic reports on such records shall be compiled and issued by the committee upon request of the Secretary.

MISCELLANEOUS PROVISIONS

§ 950.80 Reports.

(a) Upon the request of the committee with the approval of the Secretary, handlers shall furnish to the committee, in such manner and at such time as may be prescribed, such information as will enable the committee to exercise its powers and perform its duties under this subpart. The Secretary shall have the right to modify, change, or rescind any requests for reports pursuant to this section.

(b) All such reports shall be held under appropriate protective classification and custody by the committee, or duly appointed employees thereof, so that the information contained therein which may adversely affect the competitive position of any handler in relation to other handlers will not be disclosed. Compilations of general reports from data submitted by handlers is authorized, subject to the prohibition of disclosure of individual handlers' identities or operations.

(c) Each handler shall maintain for at least two succeeding years such records of the potatoes received, and of potatoes disposed of, by such handler as may be necessary to verify the reports he submits to the committee pursuant to this section.

§ 950.81 Compliance.

Except as provided in this subpart, no handler shall ship potatoes, the shipment of which has been prohibited by the Secretary in accordance with provisions of this subpart, and no handler shall ship potatoes except in conformity to the provisions of this subpart.

§ 950.82 Right of the Secretary.

The members of the committee (including successors, and alternates), and any agent or employee appointed or employed by such committee, shall be subject to removal or suspension by the Secretary at any time. Each and every order, regulation, decision, determination or other act of the committee shall be subject to the continuing right of the Secretary to disapprove of the same at any time. Upon such disapproval the disapproved action of the said committees shall be deemed null and void, except as to acts done in reliance thereon or in compliance therewith prior to such disapproval by the Secretary.

§ 950.83 Effective time.

The provisions of this subpart shall become effective at such time as the Secretary may declare and shall continue in force until terminated in one of the ways specified in this subpart.

§ 950.84 Termination or suspension.

(a) The Secretary may, at any time, terminate the provisions of this subpart by giving at least one day's notice by means of a press release or in any other manner which he may determine.

(b) The Secretary may terminate or suspend the operation of any or all of the provisions of this subpart whenever he finds that such provisions do not tend to effectuate the declared policy of the act.

(c) The Secretary shall terminate the provisions of this subpart at the end of any fiscal period whenever he finds that such termination is favored by a majority of producers, who during the preceding marketing season, have been engaged in the production for market of potatoes: *Provided,* That such majority has, during such period produced for market more than fifty percent of the volume of such potatoes produced for market; but such termination shall be effective only if announced at least 30 days prior to the end of the then current fiscal period.

(d) The provisions of this subpart shall, in any event, terminate whenever the provisions of the act authorizing them cease to be in effect.

§ 950.85 Proceedings after termination.

(a) Upon the termination of the provisions of this subpart, the members of the committee then functioning shall continue as joint trustees, for the purpose of liquidating the affairs of the committee and of all the funds and property then in the possession of or under control of such committee, including claims for any funds unpaid or property not delivered at the time of such termination. Action by said trusteeship shall require the concurrence of a majority of the said trustees.

(b) The said trustees shall continue in such capacity until discharged by the Secretary; shall, from time to time, account for all receipts and disbursements and deliver all property on hand, together with all books and records of the committee and of the trustees, to such person as the Secretary may direct; and shall upon request of the Secretary, execute such assignments or other instruments necessary or appropriate to vest in such person full title and right to all of the funds, property, and claims vested in the committee or the joint trustees pursuant to this subpart.

(c) Any person to whom funds, property, or claims, have been transferred or delivered by the committee, or its members, pursuant to this section, shall be subject to the same obligations imposed upon the members of such committees and upon the said trustees.

§ 950.86 Effect of termination or amendment.

Unless otherwise expressly provided by the Secretary, the termination of this subpart or any regulation issued pursuant to this subpart or the issuance of any amendments to either thereof, shall not (a) affect or waive any right, duty, obligation, or liability which shall have arisen or which may thereafter arise in connection with any provision of this subpart or any regulation issued under this subpart, or (b) release or extinguish any violation of this subpart or of any regulation issued under this subpart or (c) affect or impair any rights or remedies of the Secretary or of any other person with respect to any such violation.

§ 950.87 Duration of immunities.

The benefits, privileges, and immunities conferred upon any person by virtue of this subpart shall cease upon the termination of this subpart, except with respect to acts done under and during the existence of this subpart.

§ 950.88 Agents.

The Secretary may, by designation in writing, name any person including any officer or employee of the Government, or name any agency in the United States Department of Agriculture, to act as his agent or representative in connection with any of the provisions of this subpart.

§ 950.89 Derogation.

Nothing contained in this subpart is, or shall be construed to be, in derogation or in modification of the rights of the Secretary or of the United States to exercise any powers granted by the act or otherwise, or, in accordance with such powers, to act in the premises whenever such action is deemed advisable.

§ 950.90 Personal liability.

No member or alternate of the committee, nor any employee or agent thereof, shall be held personally responsible, either individually or jointly with others, in any way whatsoever, to any handler or to any other person for

errors in judgment, mistakes, or other acts, either of commission or omission, as such member, alternate, employee, or agent except for acts of dishonesty.

§ 950.91 Separability.

If any provision of this subpart is declared invalid, or the applicability thereof to any person, circumstance, or thing is held invalid, the validity of the remainder of this subpart, or the applicability thereof to any other person, circumstance, or thing shall not be affected thereby.

§ 950.92 Amendments.

Amendments to this subpart may be proposed, from time to time, by the committee or by the Secretary.

Subpart—Exemption Certificates and Safeguards

SOURCE: 20 FR 26, Jan. 4, 1955, unless otherwise noted. Redesignated at 26 FR 12751, Dec. 30, 1961.

GENERAL

§ 950.100 Communications.

Unless otherwise provided in the marketing agreement and order, or by specific direction of the administrative committee, all reports, applications, submittals, requests, and communications in connection with the marketing agreement and order shall be addressed to the Maine Potato Administrative Committee at its principal office.

DEFINITIONS

§ 950.110 Order.

"Order" means Order No. 950 (§§ 950.1 to 950.92) regulating the handling of Irish potatoes grown in Maine.

§ 950.111 Marketing agreement.

"Marketing Agreement" means Marketing Agreement No. 122.

§ 950.112 Terms.

Terms used in this subpart shall have the same meaning as when used in the marketing agreement and order (§§ 950.1 to 950.92).

§ 950.113 Area determinations.

"Immediate area of production" and "immediate shipping area", respectively, are synonymous with "District".

§ 950.114 Pack or packs.

Pursuant to § 950.17, each of the following weight limits when used in combination with any grade, as such term is defined in § 950.9, is approved as a pack, and applies only to the original package and not to a combination of such packages:

100 pounds.
75 pounds.
50 pounds.
25 pounds.
15 pounds.
10 pounds.
7½ pounds.
5 pounds.
3 pounds.

§ 950.115 Fiscal period.

The initial fiscal period shall begin on the effective date of this part, August 30, 1954, and end July 31, 1955, both dates inclusive. Thereafter, and until August 1, 1957, each fiscal period shall begin on August 1 of each year and end July 31 of the following year, both dates inclusive. The fiscal period beginning August 1, 1957, shall end August 31, 1958. Thereafter, each fiscal period shall begin September 1 of each year and end on August 31 of the following year, both dates inclusive.

[22 FR 10684, Dec. 25, 1957. Redesignated at 26 FR 12751, Dec. 30, 1961, and 44 FR 73012, Dec. 17, 1979]

EXEMPTIONS

§ 950.120 Application.

Any producer or handler applying for exemption from regulations issued pursuant to § 950.52 shall file such application with the administrative committee, or its duly authorized agent for such purpose, on forms to be furnished by such committee. Each application shall state the name and address of the applicant; the grade, size and quality regulations from which exemption is requested; and facts demonstrating that the potatoes, for which exemption is requested, were

adversely affected by acts beyond his control or by acts beyond the applicant's reasonable expectation. Each application for an exemption certificate must be accompanied by a Federal-State Inspection Certificate covering the lot of potatoes for which exemption is requested: *Provided,* That the committee may authorize the submission of such Federal-State Inspection Certificate subsequent to the filing of the application for exemption and prior to consideration of such application. Applications shall set forth such additional information as the administrative committee may find necessary in making determinations with respect thereto, including, without limitation thereto, the information required on producers' applications by paragraphs (a) and (b) of this section, and the information required on handlers' applications by paragraphs (c) and (d) of this section:

(a) The location of the farm on which potatoes for which exemption is requested were produced, or, if such potatoes are stored, the location of the storage where such potatoes are held, the location where such potatoes are to be processed, and the loading point from which such potatoes are to be shipped if exemption is granted;

(b) Acreage and quantity (by grade, size, quality, and variety) of potatoes harvested prior to the date of application and to be harvested, subsequent to such date, during the remainder of the season or specific portion thereof (as may be determined pursuant to this part); the quantity (by grade, size, quality, and variety) of potatoes disposed of prior to the date of application and to be disposed of subsequent to such date; the location of the potatoes to be disposed of, together with the place where such potatoes will be handled; an estimate of the portion of such potatoes which can be handled under regulation issued pursuant to § 950.52, during the remainder of the season; and the reasons why all of such potatoes cannot be handled under such regulations;

(c) The quantity (by grade, size, quality, and variety) of potatoes acquired by the applicant and stored during and immediately following the digging season, with appropriate identification of the location of individual storage bins, and a statement as to the reasons why the specified quantity of such potatoes remaining in storage cannot be handled under regulations in effect on and subsequent to the date of the application;

(d) The quantity (by grade, size, quality, and variety) of potatoes acquired by the applicant and stored during and immediately following the digging season, which were handled prior to the date of the application; and

(e) Any applicant who is a producer of potatoes and a handler of potatoes produced by others may be required by the administrative committee to distinguish between his producer and handler operations in submitting reports and data with respect to any application for exemption.

§ 950.121 Investigations.

The administrative committee may authorize investigations of applications by its employees, Federal-State inspectors, and such other persons as may be necessary to procure adequate information to pass upon the merits of such applications.

§ 950.122 Issuance.

(a) The administrative committee, or its duly authorized agents, shall give prompt consideration to all statements and facts relating to each application for exemption, and, pursuant to applicable provisions of this part, a determination shall be made as to whether or not the application is approved. The determination, if approving the application, shall be evidenced by the issuance of a certificate of exemption pursuant to § 950.72: *Provided,* That more than one certificate may be issued, at the request of an applicant, where the applicant ships or causes to be shipped the total quantity of exempted potatoes in more than one lot, in which case each certificate so issued shall be limited to the quantity of exempted potatoes to be contained in the respective lots shipped and the total quantity of exempted potatoes covered by such certificates shall not exceed the total quantity of such potatoes which would be authorized if only

one certificate were issued to such applicant.

(b) The applicant shall be notified in writing if his request for exemption is denied.

(c) Each exemption certificate issued pursuant to this subpart shall be on a form duly approved by the administrative committee and signed by an authorized representative of such committee. At least one copy of each exemption certificate issued shall be retained in the administrative committee records. Each such certificate shall contain the name and address of the recipient, the location of all potatoes authorized to be shipped thereunder, the quantity (by grade, size, quality, and variety) of potatoes which will be permitted in the exempted shipments, and such other information as may be deemed necessary by the administrative committee to provide such committee, the recipient, or both, with adequate and specific information regarding such exempted potatoes.

§ 950.123 Disposition of certificates.

Each lot of potatoes handled under an exemption certificate shall be accompanied by such certificate, or such appropriate identifying information with respect to such certificate, as the administrative committee may require, to facilitate the administration of regulatory provisions applicable thereto.

§ 950.124 Reports.

Handlers of potatoes exempted from regulation under exemption certificates shall, at such time as may be specified in such certificates, report thereon to the administrative committee the names and addresses of the persons to whom such potatoes were shipped, the quantity shipped (by grade, size, quality, and variety), the inspection certificates issued with respect thereto, the dates of such shipments, and such other information as may be requested by such committee in order to administer the regulatory provisions applicable thereto.

§ 950.125 Appeals.

If any applicant is dissatisfied with the determination of the administrative committee regarding an application for an exemption certificate, or any duly issued exemption certificate, an appeal by such applicant may be taken to such committee in accordance with § 950.74.

SAFEGUARDS

§ 950.130 Application for Certificate of Privilege.

(a) Whenever shipments are regulated pursuant to § 950.53, each handler desiring to make shipments of potatoes for any of the following purposes shall, prior thereto, apply to the administrative committee for and obtain a Certificate of Privilege permitting such shipment:

(1) Export;
(2) Livestock feed;
(3) Canning or freezing;
(4) Dehydration;
(5) Charitable purposes;
(6) Potato chips; and
(7) Other specified products.

(b) Applications for Certificates of Privilege shall be made on forms furnished by the administrative committee. Each application shall contain the name and address of the handler, and such other information as such committee may require, such as, but not limited to, the quantity (by grade, size, quality, and variety) of potatoes to be shipped, the mode of transportation, consignee, destination, and other appropriate information or documents necessary to safeguard against the entry of such potatoes into trade channels other than those for which the Certificate of Privilege is granted.

§ 950.131 Issuance.

The administrative committee or its duly authorized agents, shall give prompt consideration to each application for a Certificate of Privilege and shall determine whether the application is approved. Approval of an application shall be evidenced by the issuance of a Certificate of Privilege authorizing the applicant named therein to ship potatoes for a specified purpose for a specified period of time.

§ 950.132 Reports.

Each handler shipping potatoes under and pursuant to a Certificate of Privilege shall supply the administra-

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tive committee with a report thereon within the time specified on the application for such certificate (except shipments of less than 15 hundredweight which shall be reported within 30 days after such shipment) showing the name and address of the shipper, car or truck identification, loading point, destination, consignee, and, when inspection is required, the Federal-State Inspection Certificate number.

§ 950.133 Denial and appeal.

The administrative committee may rescind a Certificate of Privilege issued to a handler, or deny a Certificate of Privilege to a handler, upon proof satisfactory to such committee, that such handler has shipped potatoes contrary to the provisions of this part. Such administrative committee action denying a Certificate of Privilege shall apply to and not exceed a reasonable period of time as determined by such committee. Any handler who has been denied a Certificate of Privilege, or who has had a Certificate of Privilege rescinded, may appeal to the administrative committee for reconsideration. Such appeal shall be in writing.

NOTE: After January 1, 1979, "Budget of Expenses and Rate of Assessment" regulations (e.g. sections .200 through .299) and "Handling" regulations (e.g. sections .300 through .399) which are in effect for a year or less, will not be carried in the Code of Federal Regulations. For FEDERAL REGISTER citations affecting these regulations, see the "List of CFR Sections Affected" in this volume.

PART 953—IRISH POTATOES GROWN IN SOUTHEASTERN STATES

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AUTHORITY: Sec. 5, 49 Stat. 753, as amended; 7 U.S.C. 608c; secs. 1-19, 48 Stat. 31, as amended; 7 U.S.C. 601-674.

SOURCE: 19 FR 8683, Dec. 18, 1954, unless otherwise noted. Redesignated at 26 FR 12751, Dec. 30, 1961.

Subpart—Order Regulating Handling

DEFINITIONS

§ 953.1 Secretary.

"Secretary" means the Secretary of Agriculture of the United States, or any other officer or member of the United States Department of Agriculture who is or may hereafter be authorized to exercise the powers and to perform the duties of the Secretary of Agriculture.

§ 953.2 Act.

"Act" means Public Act No. 10, 73d Congress, as amended and as re-enacted and amended by the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 et seq.).

§ 953.3 Person.

"Person" means an individual, partnership, corporation, association, legal representative, or any organized group or business unit of individuals.

§ 953.4 Production area.

"Production area" means and includes the counties of Accomack, Northampton, Nansemond, James City, the cities of Chesapeake and Virginia Beach in the State of Virginia and the counties of Northampton, Halifax, Nash, Edgecombe, Pitt, Lenoir, Jones, and Onslow and all counties east thereof in the State of North Carolina.

[33 FR 8503, June 8, 1968]

§ 953.5 Potatoes.

"Potatoes" means all varieties of Irish potatoes grown in the production area.

§ 953.6 Handler.

"Handler" is synonymous with shipper and means any person (except a common or contract carrier of potatoes owned by another person) who ships potatoes in fresh form, whether or not of his own production.

§ 953.7 Ship.

"Ship" is synonymous with "handle" and means to transport, sell, or in any manner place potatoes in the current of interstate commerce or so as directly to burden, obstruct, or affect such commerce.

[33 FR 8503, June 8, 1968]

§ 953.8 Producer.

"Producer" means any person engaged in the production of potatoes for market.

§ 953.9 Fiscal period.

"Fiscal period" means the period beginning and ending on the dates approved by the Secretary pursuant to recommendations by the committee.

[33 FR 8503, June 8, 1968]

§ 953.10 Committee.

"Committee" means the Administrative Committee, called the Southeastern Potato Committee, established pursuant to § 953.15.

§ 953.11 District.

"District" means, describes, and refers to each of the geographic divisions of the production area hereby established as follows:

District No. 1. Accomack County in the State of Virginia.
District No. 2. Northampton County in the State of Virginia.
District No. 3. James City and Nansemond Counties and the cities of Chesapeake and Virginia Beach in the State of Virginia.
District No. 4. Northampton, Gates, Hertford, Bertie, Chowan, Perquimans, Pasquotank, Currituck, and Camden Counties in the State of North Carolina.
District No. 5. Halifax, Nash, Edgecombe, Pitt, Lenoir, Jones, Onslow, Carteret, Pamlico, Craven, Beaufort, Martin, Washington, Tyrrell, Hyde, and Dare in the State of North Carolina.

[33 FR 8503, June 8, 1968]

§ 953.12 Reapportionment and redistricting.

The committee may recommend, and pursuant thereto, the Secretary may approve, the reapportionment of members among districts, and the reestablishment of districts within the production area. With respect to any such changes, the committee and the Secretary shall give consideration to:

(a) Shifts in potato acreage within the districts and within the production area during recent years;

(b) The importance of new production in its relation to existing districts;

(c) The equitable relationship of committee membership and districts;

(d) Economies to result for producers in promoting efficient administration due to redistricting or reapportionment of members within districts; and

(e) Other relevant factors.

[33 FR 8503, June 8, 1968]

ADMINISTRATIVE COMMITTEE

§ 953.15 Establishment and membership.

(a) The Southeastern Potato Committee, consisting of 12 members of whom seven shall be producers and five shall be handlers is hereby established. For each member of the committee, there shall be an alternate member, who shall have the same qualifications as the member.

(b) Persons selected as members or alternates of the committee shall be individuals who are producers or handlers, respectively, in the respective district for which selected, or officers or employees of a corporate producer or handler, respectively, in such district: *Provided,* That no person, if he handles potatoes, shall be eligible for selection as a producer member on said committee unless 51 percent or more of the potatoes handled by him during the then current fiscal year were of his own production, or unless such person is an officer or employee of a producer's cooperative marketing association.

[19 FR 8683, Dec. 18, 1954, as amended at 33 FR 8503, June 8, 1968]

§ 953.16 Term of office.

(a) The term of office for committee members and alternates shall, except as otherwise specified, be for 1 year. The dates on which such term of office shall begin and end shall be established by the Secretary pursuant to the committee's recommendations, and the term of office may be extended or shortened, including that of the then current membership, to accord therewith.

(b) Committee members and alternates shall serve during the term of office for which they are selected and have qualified, or during that portion thereof, beginning on the date on which they qualify during such term of office and continuing until the end thereof, and until their successors are selected and have qualified.

[33 FR 8503, June 8, 1968]

§ 953.18 Nominations.

The Secretary may select members of the committee and alternates from nominations which may be made in the following manner:

(a) A meeting or meetings of producers and handlers shall be held by the committee for each district to designate nominees for members and alternates to the committee;

(b) At least one nominee shall be designated for each position as member and for each position as alternate member on the committee;

(c) The names of nominees shall be supplied to the Secretary in such manner and form as he may prescribe, not later than September 15 of each year, or by such other date as may be specified by the Secretary;

(d) Only producers may participate in designating producer nominees and only handlers may participate in designating handler nominees. Any person who operates in more than one district or is engaged in producing and handling potatoes, shall elect the classification (i.e., producer or handler), and the district within which he desires to participate in designating nominees;

(e) Regardless of the number of districts in which a person produces or handles potatoes, each such person is entitled to cast only one vote on behalf of himself, his agents, subsidi-

aries, affiliates, and representatives in designating nominees for committee members and alternates. An eligible voter's privilege of casting only one vote as aforesaid shall be construed to permit a voter to cast one vote for each position to be filled in the district in which he elects to vote.

[33 FR 8503, June 8, 1968]

§ 953.19 Selection.

(a) The Secretary shall select one producer member in and for each of Districts 1, 2, and 3, and two producer members in and for each of Districts 4 and 5 from nominees submitted pursuant to § 953.18 or from other eligible persons. In addition, he shall similarly select one handler member from each district. The respective alternates shall be selected on the same basis of representation as the members.

(b) The term of office of the committee members and alternates for District No. 6 shall be terminated upon deletion of such district from the production area.

(c) For the 1968–69 term of office the second producer member and his alternate for each of Districts No. 4 and 5 shall be selected as soon as practicable after deletion of District No. 6 from the production area. Nomination meetings shall be held for these positions pursuant to § 953.18 and the selections shall be made pursuant to this section for the remainder of the 1968–69 term of office.

[33 FR 8504, June 8, 1968]

§ 953.20 Failure to nominate.

If nominations are not made within the time and in the manner specified by the Secretary pursuant to § 953.18, the Secretary may, without regard to nominations, select the members and alternate members of the committee, which selection shall be on the basis of the representation provided for in § 953.19.

§ 953.21 Acceptance.

Any person selected by the Secretary as a member or as an alternate member of the committee shall qualify by filing a written acceptance with the Secretary within the time specified by the Secretary.

[33 FR 8504, June 8, 1968]

§ 953.22 Vacancies.

To fill any vacancy occasioned by the failure of any person selected as a member or as an alternate member of the committee to qualify, or in the event of the death, removal, resignation, or disqualification of any qualified member or alternate member, a successor for his unexpired term may be selected by the Secretary from nominations made in the manner specified in § 953.18, or the Secretary may select such member or alternate member from previously unselected nominees on the current nominee list from the district involved. If the names of nominees to fill any such vacancy are not made available to the Secretary within 30 days after such vacancy occurs, the Secretary may fill such vacancy without regard to nominations, which selection shall be made on the basis of the representation provided for in § 953.19.

§ 953.23 Alternate members.

An alternate member of the committee shall act in the place and stead of the member for whom he is alternate during such member's absence. In the event of death, removal, resignation, or disqualification of a member, his alternate shall act for him until a successor for the unexpired term of such member is selected and has qualified.

§ 953.24 Procedure.

(a) Nine members shall constitute a quorum of the committee and any action of the committee shall require nine concurring votes.

(b) The committee may provide procedure for meeting by telephone, telegraph, or other means of communications, and any vote cast at such a meeting shall be confirmed promptly in writing: *Provided*, That if an assembled meeting of the committee is held all votes shall be cast in person.

§ 953.25 Expenses and compensation.

Committee members and alternates when acting on committee business shall be reimbursed for reasonable expenses necessarily incurred by them in the performance of their duties and in

the exercise of committee powers under this subpart. In addition, they may receive reasonable compensation at a rate recommended by the committee and approved by the Secretary.

[33 FR 8504, June 8, 1968]

§ 953.26 Powers.

The committee shall have the following powers:

(a) To administer the provisions of this subpart in accordance with its terms;

(b) To make rules and regulations to effectuate the terms and provisions of this subpart;

(c) To receive, investigate, and report to the Secretary complaints of violation of the provisions of this subpart; and

(d) To recommend to the Secretary amendments to this subpart.

§ 953.27 Duties.

It shall be the duty of the committee:

(a) To act as intermediary between the Secretary and any producer or handler;

(b) To keep minutes, books, and records which clearly reflect all of the acts and transactions of the committee and such minutes, books, and records shall be subject to examination at any time by the Secretary or his authorized agent or representative;

(c) To investigate, from time to time, and to assemble data on the growing, harvesting, shipping, and marketing conditions with respect to potatoes, and to engage in such research and service activities which relate to the handling or marketing of potatoes as may be approved by the Secretary;

(d) To furnish to the Secretary such available information as he may request;

(e) To select subcommittees of committee members, a chairman and such other officers as may be necessary, and to adopt such rules and regulations for conduct of its business as it may deem advisable;

(f) At the beginning of each fiscal year, to submit to the Secretary a budget of its expenses for such fiscal year, together with a report thereon;

(g) To cause the books of the committee to be audited by a competent accountant at least once each fiscal year and at such other time as the committee may deem necessary or as the Secretary may request. The report of such audit shall show the receipt and expenditure of funds collected pursuant to this part; a copy of each such report shall be furnished to the Secretary and a copy of each such report shall be made available at the principal office of the committee for inspection by producers and handlers;

(h) To appoint such employees, agents, and representatives as it may deem necessary and to determine the salaries and define the duties of each such person; and

(i) To consult, cooperate and exchange information with other potato marketing committees and other individuals or agencies in connection with all proper committee activities and objectives under this subpart.

§ 953.28 Obligations.

Upon the removal or expiration of the term of office of any member of the committee, such member shall account for all receipts and disbursements and deliver all property and funds, together with all books and records, in his possession, to his successor in office or to a trustee designated by the Secretary and shall execute such assignments and other instruments as may be necessary or appropriate to vest in such successor or trustee full title to all the property, funds, and claims vested in such member pursuant to this section: *Provided*, That the provisions of this subpart shall apply to alternate members in possession of funds, property, books or records, or participate in the receipt or disbursement of funds.

§ 953.29 District committees.

Potato producers and handlers in each district, as defined in § 953.11, may establish and organize a District Committee of potato producers and handlers within each such district for the purpose of assisting in an advisory capacity the members of the Southeastern Potato Committee from their district. The size and composition of each such District Committee shall be determined by producers and handlers

within each district. Reports on the size and composition of each District Committee shall be made available upon request to the Southeastern Potato Committee. The members of such District Committees shall not receive compensation from any funds dispersed by the Southeastern Potato Committee. Members of District Committees may be selected at meetings sponsored by the Southeastern Potato Committee. The terms of office of members of District Committees shall coincide with the terms of office of members of the Southeastern Potato Committee.

EXPENSES AND ASSESSMENTS

§ 953.33 Expenses.

The committee is authorized to incur such expenses as the Secretary finds may be necessary to carry out the functions of the committee pursuant to the provisions of this subpart during each fiscal year. The funds to cover such expenses shall be acquired by levying assessments as provided in § 953.34.

§ 953.34 Assessments.

(a) Each handler who first handles potatoes shall, with respect to the potatoes so handled by him, pay to the committee such handler's pro rata share of the expenses which the Secretary finds will be necessarily incurred by the committee for its maintenance and functioning during each fiscal year. Such handler's pro rata share of such expenses shall be equal to the ratio between the total quantity of potatoes handled by him as the first handler thereof, during the applicable fiscal year, and the total quantity of potatoes handled by all handlers as the first handlers thereof, during the same fiscal year. The Secretary shall fix the rate of assessment to be paid by such handlers: *Provided*, That the rate of assessment during each fiscal year shall not exceed 1 cent per hundred-weight.

(b) At any time during or after a fiscal year, the Secretary may increase the rate of assessment in order to secure sufficient funds to cover any later finding by the Secretary relative to the expenses of the committee. Such increase shall be applicable to all potatoes handled during the given fiscal year. In order to provide funds to carry out the functions of the committee, handlers may make advance payment of assessments.

§ 953.35 Accounting.

(a) If, at the end of a fiscal period, the assessments collected are in excess of expenses incurred, such excess shall be accounted for in accordance with one of the following:

(1) If such excess is not retained in a reserve, as provided in paragraph (a)(2) of this section, it shall be refunded proportionately and to the extent practical to the persons from whom it was collected: *Provided*, That each handler may be credited with such refund, for the operations of the following fiscal period, unless he demands payment thereof, in which event such proportionate refund shall be paid to him.

(2) The committee, with the approval of the Secretary, may establish an operating monetary reserve, and may carry over into subsequent fiscal periods such excess in a reserve so established: *Provided*, That funds in the reserve shall not exceed approximately one fiscal period's expenses. Such reserve funds may be used by the committee (i) to defray expenses authorized pursuant to § 953.33, (ii) to defray expenses during any fiscal period, prior to the time assessment income is sufficient to cover such expenses, (iii) to cover deficits incurred during any fiscal period when assessment income is less than expenses, (iv) to defray expenses incurred during any period when any or all provisions of this part are suspended or are inoperative, and (v) to cover necessary expenses of liquidation in the event of termination of this part. Upon such termination, any funds not required to defray the necessary expenses of liquidation and after reasonable effort by the committee it is found impracticable to return such remaining funds to handlers from whom collected, such funds shall be disposed of in such manner as the Secretary may determine to be appropriate.

(b) The committee may make recommendations to the Secretary for one or more of the members thereof, or any other person or persons to act as trustee or trustees for holding records, funds, or any other committee property during periods of suspension of this part, or during any period or periods when regulations are not in effect; and, if the Secretary determines such action appropriate, he may direct that such person or persons shall act as trustee or trustees for the committee.

[33 FR 8504, June 8, 1968]

§ 953.36 Funds.

All funds received by the committee pursuant to any provision of this subpart shall be used solely for the purposes specified in this subpart and shall be accounted for in the following manner:

(a) The Secretary may, at any time, require the committee and its members to account for all receipts and disbursements; and

(b) Whenever any person ceases to be a member of the committee, he shall account for all receipts and disbursements and deliver all property and funds in his hands, together with all books and records in his possession, to his successor in office or to such person as the Secretary may designate, and shall execute such assignments and other instruments as may be necessary or appropriate to vest in such successor or in such designated person the right to all the property, funds, or claims vested in such member.

Regulations

§ 953.40 Marketing policy.

Prior to or at the same time initial recommendations in any fiscal period are made pursuant to § 953.41, the committee shall prepare a marketing policy, and promptly submit a copy thereof to the Secretary, setting forth its proposed policy for the marketing of potatoes during such fiscal period. In the event it becomes advisable to deviate from such marketing policy, because of changed demand and supply conditions, or as the Secretary may request, the committee shall formulate a revised marketing policy and shall submit a report thereon to the Secretary. Notice of each such marketing policy and revision thereof shall be given to producers, handlers, and other interested parties by bulletins, newspapers, or other appropriate media, and copies thereof shall be available for examination at the committee office to all interested parties.

[33 FR 8504, June 8, 1968]

§ 953.41 Recommendations for regulations.

(a) It shall be the duty of the committee to investigate supply and demand conditions for grades, sizes, and qualities of all potatoes. Whenever the committee finds that such conditions make it advisable to regulate the shipment of particular grades, sizes, or qualities of potatoes during any period in any or all portions of the production area, it shall recommend to the Secretary the particular grades, sizes, and qualities, or any combination thereof, of such potatoes deemed advisable to be shipped during such period: *Provided*, That the committee shall not recommend to the Secretary any regulation limiting the shipment of U.S. No. 1 grade or better, as such grades are defined in United States Standards for Potatoes in effect at the time of recommendation.

(b) In determining the grades, sizes, and qualities of potatoes or any and all combinations thereof deemed advisable to be regulated in view of the prospective demand thereof, the committee shall give due consideration to the following factors:

(1) Market prices, including prices by grades and sizes, of potatoes for which regulation is recommended;

(2) Potatoes on hand in the market areas as manifested by supplies en route and on track at the principal markets;

(3) Available supply, quality, and condition of potatoes in the production area and other production areas;

(4) Supplies from competing areas and regions producing potatoes;

(5) The trend and level of consumer income; and

(6) Other relevant factors.

§ 953.42 Issuance of regulations.

Whenever the Secretary shall find, from the recommendations, information and evidence submitted by the committee, or from other available information, that to limit the shipment of potatoes to particular grades, sizes, and qualities thereof in any or all portions of the production area would tend to effectuate the declared policy of the act, he shall so limit by appropriate regulations thereon the shipments of such potatoes during a specified period. The Secretary shall notify the committee of any such regulation and the committee shall give reasonable notice thereof to handlers: *Provided*, That no regulations shall be issued under this subpart limiting the shipment of U.S. No. 1 grade or better, as such grades are defined in United States Standards for Potatoes in effect at the time such regulations are issued.

§ 953.43 Minimum standards of quality.

(a) *Recommendation.* Whenever the committee deems it advisable to establish and maintain minimum standards of quality governing the shipment of potatoes, it shall recommend to the Secretary such minimum standards of quality in terms of grades, sizes, or both, below which shipments are to be prohibited. At the time of submitting each such recommendation, the committee shall also submit to the Secretary the supporting data and information upon which it acted in making such recommendation. The committee shall submit in support of its recommendations such other data and information as may be requested by the Secretary, and shall promptly give adequate notice to all handlers and growers of each such recommendation.

(b) *Establishment.* Whenever the Secretary finds, from the recommendations and information submitted by the committee, or from other available information, that to prohibit the shipment of potatoes below certain specified minimum grades, or smaller than certain specified minimum sizes, or both, would be in the public interest and would tend to effectuate the declared policy of the act, he shall so prohibit the shipment of such potatoes. The Secretary shall immediately notify the committee of the issuance of each such regulation, and the committee shall promptly give adequate notice thereof to handlers and growers.

(c) *Modification or suspension.* (1) The committee may recommend to the Secretary the modification, suspension, or termination of orders relating to minimum standards provided for or established pursuant to this subpart. If the Secretary finds, upon the basis of such recommendation and information, or upon the basis of other available information, that to modify, suspend, or terminate such orders relating to minimum standards of quality will tend to effectuate the declared policy of the act, he shall so modify or suspend such standards for (i) a specified period of time, or (ii) for an indefinite period of time.

(2) The Secretary shall immediately notify the committee and the committee shall promptly give notice to growers and handlers, of any order issued by the Secretary modifying, suspending, or terminating any orders relating to minimum standards of quality established pursuant to, or provided for, in this subpart.

§ 953.44 Limitation of regulations.

(a) Nothing contained in this subpart shall authorize any limitation of the shipment of potatoes for any of the following purposes:

(1) Potatoes shipped for consumption by charitable institutions or for distribution by relief agencies;

(2) Potatoes shipped for manufacturing or conversion into byproducts, except for manufacturing or conversion into specified products recommended by the committee for regulation and approved by the Secretary therefor; and

(3) Upon recommendation of the committee and approval of the Secretary, potatoes shipped for livestock feed, export, or for other specified purposes.

(b) The Secretary shall give prompt notice to the committee of any approval issued by him under the provisions of this section. The committee may prescribe adequate safeguards to prevent potatoes shipped for the purposes

stated above from entering the current of interstate commerce or directly burdening, obstructing, or affecting such commerce contrary to the provisions of this subpart, which safeguards may include (1) a requirement by the committee that growers and handlers who ship potatoes pursuant to this section shall file applications to do so with the committee and (2) Federal-State inspection provided by § 953.50 and the payment of a pro rata share of expenses provided by § 953.34: *Provided*, That such inspection and payment of expenses may be required at different times than otherwise specified by the aforesaid sections. The committee may issue certificates of privilege for shipments of potatoes affected or to be affected under the provisions of this section and shall make a weekly report to the Secretary showing the number of certificates applied for, the number of bushels of potatoes covered by such applications, the number of certificates denied and granted, the number of bushels of potatoes shipped under duly issued certificates, and such other information as may be requested by the Secretary. The Secretary shall have the right to modify, change, alter, or rescind any safeguards prescribed and any certificates issued by the committee pursuant to the provisions of this section.

§ 953.45 Minimum quantities.

The committee, with the approval of the Secretary, may establish, for any or all portions of the production area, quantities below which shipments shall be free from regulations issued pursuant to: § 953.42, Regulations, § 953.50, Inspection and certification, and § 953.34, Assessments.

[33 FR 8504, June 8, 1968]

INSPECTION AND CERTIFICATION

§ 953.50 Inspection and certification.

The Southeastern Potato Committee shall require, with approval of the Secretary, that whenever regulations are in effect pursuant to this subpart, each first handler shall, prior to making each shipment of potatoes cause each shipment to be inspected by an authorized representative of the Federal-State Inspection Service. Each handler shall make arrangements with the inspecting agency to forward promptly to the committee a copy of each inspection certificate, issued as aforesaid.

EFFECTIVE TIME AND TERMINATION

§ 953.65 Effective time.

The provisions of this subpart shall become effective at such time as the Secretary may declare above his signature attached to this subpart, and shall continue in force until terminated in one of the ways specified in § 953.66.

§ 953.66 Termination.

(a) The Secretary may, at any time, terminate the provisions of this subpart by giving at least one day's notice by means of a press release or in any other manner which he may determine.

(b) The Secretary may terminate or suspend the operations of any or all of the provisions of this subpart whenever he finds that such provisions do not tend to effectuate the declared policy of the act.

(c) The Secretary shall terminate the provisions of this subpart at the end of any fiscal year whenever he finds that such termination is favored by a majority of producers who, during the preceding fiscal year have been engaged in the production for market of potatoes: *Provided*, That such majority has, during such year, produced for market more than fifty percent of the volume of such potatoes produced for market; but such termination shall be effected only if announced on or before October 31, of the then current fiscal year.

(d) The provisions of this subpart shall, in any event, terminate whenever the provisions of the act authorizing them, cease to be in effect.

§ 953.67 Proceedings after termination.

(a) Upon the termination of the provisions of this subpart, the then functioning members of the committee shall continue as trustees, for the purpose of liquidating the affairs of the committee, of all funds and the property then in the possession of, or

under control of, the committee, including claims for any funds unpaid, or property not delivered at the time of such termination. Action by said trusteeship shall require the concurrence of a majority of the said trustees.

(b) The said trustees shall continue in such capacity until discharged by the Secretary; shall, from time to time, account for all receipts and disbursements and deliver all property on hand, together with all books and records of the committee and of the trustees, to such person as the Secretary may direct; and shall, upon request of the Secretary, execute such assignments or other instruments necessary or appropriate to vest in such person full title and right to all of the funds, property, and claims vested in the committee or the trustees pursuant to this subpart.

(c) Any person to whom funds, property, or claims have been transferred, or delivered by the committee or its members, pursuant to this section, shall be subject to the same obligations imposed upon the members of the committee and upon the said trustees.

§ 953.68 Effect of termination or amendment.

Unless otherwise expressly provided by the Secretary, the termination of this subpart, or of any regulation issued pursuant to this subpart, or the issuance of any amendment to either thereof, shall not (a) affect or waive any right, duty, obligation, or liability which shall have arisen, or which may thereafter arise in connection with any provision, of this subpart, or any regulation issued under this subpart, or (b) release or extinguish any violation of this subpart, or of any regulation issued under this subpart, or (c) affect or impair any rights or remedies of the Secretary, or of any other person with respect to any such violation.

Miscellaneous Provisions

§ 953.75 Reports and records.

(a) Upon the request of the committee, with the approval of the Secretary, every handler shall furnish to the committee, in such manner and at such time as may be prescribed, such information as will enable the committee to exercise its duties under this subpart. The Secretary shall have the right to modify, change, or rescind requests for any reports pursuant to this section.

(b) Each handler shall establish and maintain for at least two succeeding years such records and documents with respect to potatoes received and potatoes disposed of by him as will substantiate the required reports.

(c) For the purpose of assuring compliance with the recordkeeping requirements and verifying reports filed by handlers, the Secretary, and the committee through its duly authorized employees, shall have access to such records.

(d) All reports and records furnished or submitted by handlers to, or obtained by the employees of, the committee which contain data or information constituting a trade secret or disclosing the trade position, financial condition, or business operations of the particular handler from whom received, shall be treated as confidential and the reports and all information obtained from records shall at all times be kept in the custody and under the control of one or more employees of the committee who shall disclose such information to no person other than the Secretary, or as authorized by the Secretary. Compilations of general reports from data and information submitted by handlers is authorized subject to the prohibition of disclosure of individual handlers' identity or operations.

[33 FR 8504, June 8, 1968]

§ 953.76 Compliance.

Except as provided in this subpart, no handler shall ship potatoes, the shipment of which has been prohibited by the Secretary in accordance with provisions of this subpart, and no handler shall ship potatoes except in conformity to the provisions of this subpart.

§ 953.77 Right of the Secretary.

The members of the committee (including successors and alternates), and

any agent or employee appointed or employed by the committee, shall be subject to removal or suspension by the Secretary at any time. Each and every order, regulation, decision, determination, or other act of the committee, shall be subject to the continuing right of the Secretary to disapprove of the same at any time. Upon such disapproval, the disapproved action of the said committee shall be deemed null and void, except as to acts done in reliance thereon or in compliance therewith prior to such disapproval by the Secretary.

§ 953.78 Duration of immunities.

The benefits, privileges, and immunities conferred upon any person by virtue of this subpart shall cease upon the termination of this subpart except with respect to acts done under and during the existence of this subpart.

§ 953.79 Agents.

The Secretary may, by designation in writing, name any person, including any officer or employee of the Government, or name any bureau or division in the United States Department of Agriculture, to act as his agent or representative in connection with any of the provisions of this subpart.

§ 953.80 Derogation.

Nothing contained in this subpart is, or shall be construed to be, in derogation or in modification of the rights of the Secretary or of the United States to exercise any powers granted by the act or otherwise, or in accordance with such powers, to act in the premises whenever such action is deemed advisable.

§ 953.81 Personal liability.

No member or alternate of the committee, nor any employee or agent thereof, shall be held personally responsible, either individually or jointly with others, in any way whatsoever to any handler or to any person for errors in judgment, mistakes, or other acts, either of commission or omission, as such member, alternate, or employee, except for acts of dishonesty.

§ 953.82 Separability.

If any provision of this subpart is declared invalid, or the applicability thereof to any person, circumstance, or thing is held invalid, the validity of the remainder of this subpart, or the applicability thereof to any other person, circumstance, or thing shall not be affected thereby.

§ 953.83 Amendments.

Amendments to this subpart may be proposed from time to time by the committee or by the Secretary.

Subpart—Rules and Regulations

General

§ 953.100 General.

(a) "Marketing agreement" means Marketing Agreement No. 104.

(b) "Order" means Order No. 953 (§§ 953.1 through 953.83).

(c) All other terms shall have the same meaning as when used in the marketing agreement and order.

Change in Date for Completing Nominations, Term of Office, and Fiscal Period

§ 953.120 Nomination date.

The names of committee nominees shall be supplied to the Secretary in such manner and form as he may prescribe, pursuant to § 953.18, not later than January 31 of each year.

[34 FR 17328, Oct. 27, 1969]

§ 953.121 Term of office.

The term of office, pursuant to § 953.16, which began November 1, 1968, shall end March 31, 1970. Thereafter, each term of office shall begin April 1 of each year and end March 31 of the following year, both dates inclusive.

[34 FR 17828, Oct. 27, 1969]

§ 953.122 Fiscal period.

The fiscal period, pursuant to § 953.9, which began on April 1, 1976, shall end on May 31, 1977. Thereafter, each fiscal period shall begin on June 1 of each year and end on May 31 of

the following year, both dates inclusive.

[41 FR 42184, Sept. 27, 1976]

§ 953.123 Reestablishment of districts and reapportionment of committee membership.

(a) Pursuant to § 953.12: (1) The counties of James City and Nansemond and the cities of Chesapeake and Virginia Beach (currently District No. 3) are reestablished as a part of District No. 2; (2) the membership of the Southeastern Potato Committee shall be apportioned among the districts of the production are so as to provide the following representation: Two producer members and one handler member from each of Districts No. 1, 4, and 5; one producer member and two handler members from District No. 2. The respective alternates shall be selected on the same basis of representation as the members.

(b) Terms used in this section have the same meaning as when used in the said marketing agreement and this part.

[37 FR 927, Jan. 21, 1972]

NOTE: After January 1, 1979, "Budget of Expenses and Rate of Assessment" regulations (e.g. sections .200 through .299) and "Handling" regulations (e.g. sections .300 through .399) which are in effect for a year or less, will not be carried in the Code of Federal Regulations. For FEDERAL REGISTER citations affecting these regulations, see the "List of CFR Sections Affected" in this volume.

PART 958—ONIONS GROWN IN CERTAIN DESIGNATED COUNTIES IN IDAHO, AND MALHEUR COUNTY, OREGON

Subpart—Order Regulating Handling

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958.160 Reestablishment of Districts.

AUTHORITY: Secs. 1-19, 48 Stat. 31, as amended; 7 U.S.C. 601-674.

SOURCE: 22 FR 26, Jan. 3, 1957, unless otherwise noted. Redesignated at 26 FR 12751, Dec. 30, 1961.

Subpart—Order Regulating Handling

DEFINITIONS

§ 958.1 Secretary.

"Secretary" means the Secretary of Agriculture of the United States or any officer or employee of the United States Department of Agriculture to whom authority has heretofore been delegated, or to whom authority may hereafter be delegated, to act in his stead.

§ 958.2 Act.

"Act" means Public Act No. 10, 73d Congress, as amended and as reenacted and amended by the Agricultural Marketing Agreement Act of 1937, as amended (48 Stat. 31, as amended; 7 U.S.C. 601 et seq., 68 Stat. 906, 1047).

§ 958.3 Person.

"Person" means an individual, partnership, corporation, association, or any other business unit.

§ 958.4 Production area.

"Production area" means all territory included within the boundaries of the County of Malheur in Oregon, and all counties south and southeast of the southern boundary of Idaho County in the State of Idaho.

§ 958.5 Onions.

"Onions" means all varieties of *Allium cepa*, commonly known as onions, grown, or which may be grown in the production area.

[41 FR 36196, Aug. 27, 1976]

§ 958.6 Handler.

"Handler" is synonymous with "shipper" and means any person (except a common or contract carrier of onions owned by another person) who handles onions.

§ 958.7 Handle.

"Handle" is synonymous with "ship" and means to sell or transport onions, or cause onions to be sold or transported, within the production area or between the production area and any point outside thereof. Except as otherwise provided in §§ 958.56 and 958.65, this definition of "handle" shall not be applicable to onions that are transported within the production area for grading or storing therein, or to onions that are transported or sold to commercial dehydrators for processing by such dehydrators into dehydrated onion products.

§ 958.8 Grading.

"Grading" is synonymous with "prepare for market" and means the sorting or separation of onions into grades and sizes for market purposes.

§ 958.9 Grade and size.

"Grade" means any of the officially established grades of onions, and "size" means any of the officially established sizes of onions, as set forth in:

(a) The United States Standards for grades of onions (other than Bermuda-Granex and Creole Types) (§§ 51.2830 to 51.2850 of this title), or amendments thereto, or modifications thereof, or variations based thereon; and

(b) Any other United States Standards, or State of Idaho or Oregon Standards for onions, or amendments thereto, or modifications thereof, or variations based thereon.

The term "size" also includes any of the sizes recognized by the onion trade in the production area.

§ 958.10 Producer.

"Producer" means any person engaged in the production of onions for market.

§ 958.11 Committee.

"Committee" means the Idaho-Eastern Oregon Onion Committee established pursuant to § 958.20.

§ 958.12 Fiscal period.

"Fiscal period" means the period beginning and ending on the dates approved by the Secretary pursuant to recommendations by the committee.

§ 958.13 Variety or varieties.

"Variety" or "varieties" means and includes all classifications of onions according to those definitive characteristics now or hereafter recognized by the United States Department of Agriculture.

§ 958.14 Export.

"Export" means shipment of onions beyond the boundaries of continental United States.

§ 958.15 District.

"District" means each of the geographical divisions of the production area initially established or as reestablished pursuant to § 958.27.

§ 958.16 Pack.

"Pack" means a quantity of onions in any type of container and which falls within specific weight limits or within specific grade or size limits, or both, as may be recommended by the committee and approved by the Secretary.

§ 958.17 Container.

"Container" means a sack, box, bag, crate, hamper, basket, carton, package, or any other type of receptacle used in the packaging, transportation, sale, shipment or other handling of onions.

ADMINISTRATIVE COMMITTEE

§ 958.20 Establishment and membership.

(a) The Idaho-Eastern Oregon Onion Committee, consisting of six producer members, four handler members, and one public member is hereby established. Each shall have an alternate who shall have the same qualifications as the member.

(b) An alternate member of the committee shall act in the place and stead of the member for whom he is an alternate, during such member's absence or inability to act, and shall perform other duties as assigned. In the event of the death, removal, resignation or disqualification of a member, his alternate shall act for him until a successor for such member is selected and has qualified.

[22 FR 26, Jan. 3, 1957. Redesignated at 26 FR 12751, Dec. 30, 1961, and amended at 47 FR 8000, Feb. 24, 1982]

§ 958.21 Procedure.

(a) Seven members of the committee shall be necessary to constitute a quorum and seven concurring votes shall be required to pass any motion or approve any committee action.

(b) The committee may provide for voting by telephone, telegraph, or other means of communication and any such vote shall be confirmed promptly in writing: *Provided,* That if an assembled meeting is held, all votes shall be cast in person.

§ 958.22 Selection.

The Secretary shall select committee members and alternates from the nominee lists submitted pursuant to this part or from among other eligible persons.

(a) Each person selected as a committee member or alternate to represent producers shall be an individual who is a producer, or an officer or employee of a producer, in the district for which selected.

(b) Each person selected as a committee member or alternate to represent handlers shall be an individual who is a handler, or an officer or employee of a handler in the portion of the production area for which selected.

(c) The Secretary shall select one producer member of the committee, and alternate, from each of the districts established, or reestablished, pursuant to § 958.27. The Secretary shall also select one handler member of the committee, and his alternate, from the Idaho portion of the production area and one member and his alternate from Malheur County, Oregon, and two handler members, and their respective alternates, from the production area-at-large.

(d) Each person selected by the Secretary as a committee member or alternate shall qualify by filing a writ-

ten acceptance promptly with the Secretary.

(e) The public member shall be a resident of the production area and have no direct financial interest in the commercial production, financing, buying, packing or marketing of onions except as a consumer nor be a director, officer or employee of any firm so engaged.

[22 FR 26, Jan. 3, 1957. Redesignated at 26 FR 12751, Dec. 30, 1961, and amended at 47 FR 8000, Feb. 24, 1982]

§ 958.23 Term of office.

(a) The term of office of committee members and alternates shall be for two years beginning on the first day of June and continuing through May 31. The terms of office of members and alternates shall be so determined that one-half of the total committee membership shall terminate each May 31.

(b) Committee members and alternates shall serve during the term of office for which they are selected and have qualified, or during that portion thereof beginning on the date on which they qualify during the current term of office and continuing until the end thereof, and until their successors are selected and have qualified.

§ 958.24 Powers.

The committee shall have the following powers:

(a) To administer the provisions of this part in accordance with its terms;

(b) To make rules and regulations to effectuate the terms and provisions of this part;

(c) To receive, investigate, and report to the Secretary complaints of violations of the provisions of this part; and

(d) To recommend to the Secretary amendments to this part.

§ 958.25 Duties.

It shall be the duty of the committee:

(a) At the beginning of each fiscal period, or as soon thereafter as practicable, to meet and organize, to select a chairman and such other officers as may be necessary, to select subcommittees of committee members, and to adopt such rules and regulations for the conduct of its business as it may deem advisable;

(b) To act as intermediary between the Secretary and any producer or handler;

(c) To furnish to the Secretary such available information as he may request;

(d) To appoint such employees, agents, and representatives as it may deem necessary and to determine the salaries and define the duties of each such person;

(e) To investigate from time to time and to assemble data on the growing, harvesting, shipping and marketing conditions with respect to onions and to engage in such research and service activity which relate to the production, handling or marketing of onions as may be approved by the Secretary;

(f) To keep minutes, books, and records which clearly reflect all of the acts and transactions of the committee and such minutes, books, and records shall be subject to examination at any time by the Secretary or his authorized agent or representative;

(g) To make available to producers and handlers the committee voting record on recommended regulations and on other matters of policy;

(h) Prior to each fiscal period, to submit to the Secretary a budget of its proposed expenses for such fiscal period, together with a report thereon;

(i) To cause the books of the committee to be audited by a competent accountant at least once each fiscal period, and at such other time as the committee may deem necessary or as the Secretary may request; and the report of such audit shall show the receipt and expenditure of funds collected pursuant to this part; a copy of each such report shall be furnished to the Secretary and a copy of each such report shall be made available at the principal office of the committee for inspection by producers and handlers; and

(j) To consult, cooperate, and exchange information, with other onion marketing committees and other individuals or agencies in connection with all proper committee activities and objectives under this subpart; and

(k) To recommend nominees for the public member and alternate.

[22 FR 26, Jan. 3, 1957. Redesignated at 26 FR 12751, Dec. 30, 1961, and amended at 41 FR 36196, Aug. 27, 1976; 47 FR 8000, Feb. 24, 1982]

§ 958.26 Expenses.

Committee members and alternates when acting on committee business shall be reimbursed for reasonable expenses necessarily incurred by them in the performance of their duties and in the exercise of their powers under this part. However, at its discretion the committee may request the attendance of alternates at any or all meetings notwithstanding the expected or actual presence of the respective members.

[41 FR 36196, Aug. 27, 1976]

§ 958.27 Districts.

(a) For the purpose of selecting committee members, the following districts of the production area are hereby initially established:

District No. 1 (Emmett, Payette, Weiser Area): All territory within the boundaries of Washington, Payette and Gem Counties, in Idaho.

District No. 2 (Oregon Slope): All territory within a boundary following the Snake River northwesterly from its junction with the Malheur River, to the west line of Range 46E; thence south along said west line to the south line of Township 17S, and thence east along said south line to its junction with the Malheur River, and thence northeasterly along the Malheur River to the junction with the Snake River, the point of beginning.

District No. 3 (Ontario, Vale, Jamieson, Brogan): All territory within a boundary starting at the junction of the Malheur River with the Snake River and extending southwestward along the Malheur River to its junction with the south line of Township 17S, E. W. M.; thence westward along this line to its junction with the west line of Range 46E; thence north along this line to its junction with the Snake River; thence northwest along the Snake River to its junction with the north boundary of Malheur County; thence west along the north boundary of Malheur County to the west boundary of the county; thence south along the west boundary of Malheur County to its intersection with the south line of Township 20S; thence east along this line to its junction with the Hyline Canal and Siphon; thence northeast along the Hyline Canal to its intersection with Highway 20; thence east along Highway 20 to Cairo Junction; thence south ½ mile to the junction of Highway 20 to Oregon Avenue; thence east along Oregon Avenue to its termination at the Snake River; thence north along the Snake River to its junction with the Malheur River, the point of beginning.

District No. 4 (Nyssa-Adrian): All the area of Malheur County, Oregon, south of District No. 3.

District No. 5 (Parma, Wilder, Nampa, and Notus Area): Canyon County, Idaho.

District No. 6 (Homedale, Marsing, Meredian, Melba, Mountain Home, Glenns Ferry and Twin Falls Area): All counties in the Idaho portion of the production area not included within Districts Nos. 1 and 5.

(b) The Secretary, upon the recommendation of the committee, may reestablish districts within the production area and may reapportion committee membership among the various districts: *Provided*, That in recommending any such changes in districts or representation, the committee shall give consideration to: (1) The relative importance of new producing sections; (2) changes in the relative position of existing districts with respect to onion production; (3) the geographic location of areas of production as they would affect the efficiency of administering this part; (4) other relevant factors: *Provided, further*, That there shall be no change in the total number of committee members or in the total number of districts.

§ 958.28 Nominations.

Nominations from which the Secretary may select the members of the Idaho-Eastern Oregon Onion Committee and their respective alternates may be made in the following manner:

(a) The committee shall hold or cause to be held prior to April 1 of each year, after the effective date of this subpart, one or more meetings of producers and of handlers in each of the districts, or portions of the production area, in which the then current terms of office will expire the following May 31;

(b) In arranging for such meetings the committee may, if it deems desirable, cooperate with existing organizations and agencies and may combine its meetings with others;

(c) Nominations for committee members and alternate members shall be supplied to the Secretary, in such manner and form as he may prescribe, not later than 30 days prior to the end of each fiscal period;

(d) Only producers may participate in designating nominees for producer committee members and their alternates and only handlers may participate in designating nominees for handler committee members and their alternates;

(e) Each person who is both a handler and a producer may vote either as a handler or as a producer and may select the group in which he will vote;

(f) Regardless of the number of districts in which a person produces or handles onions, each such person is entitled to cast only one vote on behalf of himself, his partners, agents, subsidiaries, affiliates and representatives, in designating nominees for committee members and alternates. In the event a person is a producer engaged in producing onions in more than one district, such person shall select the district within which he may participate as aforesaid in designating nominees. Similarly, a person who is a handler both in Malheur County, Oregon, and in the Idaho portion of the production area, may select either Malheur County or the Idaho portion of the production area in which to cast his vote for the applicable committee handler member and alternate. Each such handler shall also be entitled to cast his vote for the committee member and alternate to represent the production area-at-large. An eligible voter's privilege of casting only one vote, as aforesaid, shall be construed to permit such voter to cast one vote for each member and alternate position to be filled in the respective district or portion of the production area, as the case may be, in which he elects to vote; and

(g) The producer and handler members of the committee shall nominate the public member and alternate. The committee shall prescribe such additional qualifications, administrative rules and procedures for selection and voting for each candidate as it deems necessary and as the Secretary approves.

[22 FR 26, Jan. 3, 1957. Redesignated at 26 FR 12751, Dec. 30, 1961, and amended at 47 FR 8000, Feb. 24, 1982]

§ 958.29 Failure to nominate.

If nominations are not made within the time and in the manner specified by the Secretary pursuant to § 958.28, the Secretary may, without regard to nominations, select the committee members and alternates on the basis of the representation provided for in this subpart.

§ 958.30 Vacancies.

To fill any vacancy occasioned by the failure of any person, selected as a committee member or alternate, to qualify, or in the event of the death, removal, resignation, or disqualification of any qualified member or alternate, a successor for his unexpired term may be selected by the Secretary from nominations made in the manner specified in § 958.28, or the Secretary may select such committee member or alternate from previously unselected nominees on the current nominee list from the district or portion of the production area, as the case may be, that is involved, or from other eligible persons. If the names of nominees to fill any such vacancy are not made available to the Secretary within 30 days after such vacancy occurs, the Secretary may fill such vacancy without regard to nominations, which selection shall be made on the basis of the representation provided for in this subpart.

Expenses and Assessments

§ 958.40 Expenses.

The committee is authorized to incur such expenses as the Secretary may find are reasonable and likely to be incurred by it during each fiscal period for its maintenance and functioning, and for such purposes as the Secretary, pursuant to this subpart, determines to be appropriate. Handlers shall share expenses upon the basis of a fiscal period. Each handler's share of such expenses shall be proportionate to the ratio between the total quantity of such handler's onion shipments inspected pursuant to this part that are handled by him as the

first handler thereof during a fiscal period, and the total quantity of such onions handled by all handlers as first handlers thereof during the same period.

§ 958.41 Budget.

Prior to each fiscal period, and as may be necessary thereafter the committee shall prepare a budget of estimated income and expenditures necessary for the administration of this part. The committee shall recommend to the Secretary a rate of assessment calculated to provide adequate funds to defray its proposed expenditures. The committee shall present such budget promptly to the Secretary with an accompanying report thereon showing the basis for its calculations and recommended rate.

[22 FR 26, Jan. 3, 1957. Redesignated at 26 FR 12751, Dec. 30, 1961, and amended at 41 FR 36196, Aug. 27, 1976]

§ 958.42 Assessments.

(a) The funds to cover the committee's expenses pursuant to § 958.40 shall be acquired by the levying of assessments upon handlers as provided in this subpart. Each handler who handles onions as the first handler thereof which are inspected pursuant to this part shall pay assessments to the committee upon demand, which assessments shall be in payment of such handler's pro rata share of such expenses.

(b) Assessments shall be levied upon handlers at rates established by the Secretary. Such rates may be established upon the basis of the committee's recommendations or other available information.

(c) At any time during or subsequent to a given fiscal period, the committee may recommend the approval of an amended budget and an increase in the rate of assessment. Upon the basis of such recommendation, or other available information, the Secretary may approve an amended budget and increase the rate of assessment. Such increase shall be applicable to all onion shipments inspected pursuant to this part during such fiscal period.

§ 958.43 Accounting.

(a) All funds received by the committee pursuant to the provisions of this part shall be used solely for the purposes specified in this part.

(b) The Secretary may at any time require the committee, its members and alternates, employees, agents, and all other persons to account for all receipts and disbursements, funds, property, or records for which they are responsible. Whenever any person ceases to be a member or alternate of the committee, he shall account for all receipts, disbursements, funds, and property (including, but not being limited to, books and other records) pertaining to the committee's activities for which he is responsible, and deliver all such property and funds in his hands to such successor, agency, or person as may be designated by the Secretary, and shall execute such assignments and other instruments as may be necessary or appropriate to vest in each such successor, agency, or person as may be designated by the Secretary the right to all of such property and funds and all claims vested in such person.

(c) The committee may make recommendations to the Secretary for one or more of the members thereof, or any other person, to act as a trustee for holding records, funds, and any other committee property during periods of suspension of this part, or during any periods when regulations are not in effect; and, if the Secretary determines such action appropriate, he may direct that such person or persons shall so act as trustee or trustees.

§ 958.44 Reserve fund.

At the end of each fiscal period, funds in excess of the committee's expenses may be placed in an operating reserve not to exceed approximately 1 fiscal year's operational expenses or such lower limits as the committee, with the approval of the Secretary, may establish. Also, the committee, with the approval of the Secretary, may include in its budget an item for such reserve. Funds in the reserve shall be available for use by the committee for expenses authorized pursuant to § 958.40. Funds in excess of

those placed in the operating reserve shall be refunded to handlers. Each handler's share of such excess shall be the amount he paid in excess of his pro rata share of the expenses of the committee.

[32 FR 11261, Aug. 3, 1967]

§ 958.45 Accounting of funds upon termination of the order.

Any funds collected as assessments pursuant to this subpart and remaining unexpended in the possession of the committee after termination of this part shall be distributed in such manner as the Secretary may direct: *Provided,* That to the extent practical, such funds shall be returned pro rata to the persons from whom such funds were collected.

[32 FR 11262, Aug. 3, 1967]

§ 958.46 Contributions.

The committee may accept voluntary contributions but these shall only be used to pay expenses incurred pursuant to § 958.47. Furthermore, such contributions shall be free from any encumbrances by the donor and the committee shall retain complete control of their use.

[41 FR 36196, Aug. 27, 1976]

Research and Development

§ 958.47 Research and development.

(a) The committee with the approval of the Secretary, may establish or provide for the establishment of projects involving production research, marketing research and development projects, and marketing promotion including paid advertising, designed to assist, improve, or promote the marketing, distribution, consumption or efficient production of onions. Any such project for the promotion and advertising of onions may utilize an identifying mark which shall be made available for use by all handlers in accordance with such terms and conditions as the committee, with the approval of the Secretary, may prescribe. The expenses of such projects shall be paid from funds collected pursuant to § 958.42 or § 958.46.

(b) In recommending projects pursuant to this section the committee shall give consideration to the following:

(1) The expected supply of onions in relation to market requirements;

(2) The supply situation among competing areas and commodities;

(3) The anticipated benefits from such projects in relation to their costs;

(4) The need for marketing research with respect to any market development activity; and

(5) The need for a coordinated effort with USDA's Food Marketing Alert or other similar programs.

(c) If the committee should conclude that a program of research or development should be undertaken, or continued, in any crop year, it shall submit the following for the approval of the Secretary:

(1) Its recommendations as to the funds to be obtained pursuant to § 958.42 or § 958.46;

(2) Its recommendation as to any research projects; and

(3) Its recommendation as to promotion activity and paid advertising.

(d) Upon conclusion of each activity, but at least annually, the committee shall summarize and report the results of such activity to its members and to the Secretary.

[41 FR 36196, Aug. 27, 1976]

Regulation

§ 958.50 Marketing policy.

(a) *Preparation.* Prior to each marketing season the committee shall consider and prepare a proposed policy for the marketing of onions. In developing its marketing policy the committee shall investigate relevant supply and demand conditions for onions. In such investigations the committee shall give appropriate consideration to the following:

(1) Market prices for onions, including prices by variety, grade, size, and quality, and by different packs;

(2) Supply of onions by grade, size, quality, and variety in the production area and in other onion producing sections;

(3) The trend and level of consumer income;

(4) Establishing and maintaining orderly marketing conditions for onions;
(5) Orderly marketing of onions as will be in the public interest; and
(6) Other relevant factors.

(b) *Reports.* (1) The committee shall submit a report to the Secretary setting forth the aforesaid marketing policy; and the committee shall notify producers and handlers of the contents of such report.

(2) In the event it becomes advisable to shift from such marketing policy because of changed supply and demand conditions, the committee shall prepare an amended or revised marketing policy in accordance with the manner previously outlined. The committee shall submit a report thereon to the Secretary and notify producers and handlers of the contents of such report on the revised or amended marketing policy.

§ 958.51 Recommendations for regulations.

The committee shall recommend regulations to the Secretary whenever it finds that such regulations as provided in § 958.52 will tend to effectuate the declared policy of the act. The committee also may recommend modification, suspension, or termination of any regulation, or amendments thereto, in order to facilitate the handling of onions for the purposes authorized in § 958.53. The committee may also recommend amendment, modification, termination, or suspension of any regulation issued under this part.

§ 958.52 Issuance of regulations.

(a) Except as otherwise provided in this part, the Secretary shall limit the shipment of onions by any one or more of the methods hereinafter set forth whenever he finds from the recommendations and information submitted by the committee, or from other available information, that such regulation would tend to effectuate the declared policy of the act. Such limitation may:

(1) Regulate in any or all portions of the production area, the handling of particular grades, sizes, or qualities of any or all varieties of onions, or combinations thereof, during any period or periods;

(2) Regulate the handling of particular grades, sizes, or qualities, of onions differently, for different varieties, for different portions of the production area, for different packs, or for any combination of the foregoing, during any period or periods;

(3) Provide a method, through rules and regulations issued pursuant to this part, for fixing the size, capacity, weight, dimensions, or pack of the container, or containers, which may be used in the packaging or handling of onions, including appropriate container markings to identify the contents thereof;

(4) Regulate the handling of onions by establishing, in terms of grades, sizes, or both, minimum standards of quality and maturity; or

(5) Limit the shipment of the total quantity of onions by prohibiting the handling thereof during a specified period or periods. No regulation issued pursuant to this subparagraph shall be effective for more than 96 consecutive hours: *Provided,* That not less than 72 consecutive hours shall elapse between the termination of any such period of prohibition and the beginning of the next such period.

(6) Regulate the handling of onions by establishing, in terms of total weight or total number of layers of containers of onions, the maximum load in railcars, taking into account types of containers and sizes of railcars used, potential resulting damage, and other relevant factors.

(b) In the event the handling of onions is regulated pursuant to paragraph (a)(5) of this section, no handler shall handle any onions which were prepared for market or loaded during the effective period of such regulation. However, during any such period, no such regulation shall be deemed to limit the right of any person to sell or contract to sell onions for future shipment or delivery.

(c) The Secretary may amend any regulation issued under this part whenever he finds that such amendment would tend to effectuate the declared policy of the act. The Secretary may also terminate or suspend any regulation or amendment thereof whenever he finds that such regulation or amendment obstructs or no

longer tends to effectuate the declared policy of the act.

[22 FR 26, Jan. 3, 1957. Redesignated at 26 FR 12751, Dec. 30, 1961, and amended at 32 FR 11262, Aug. 3, 1967; 47 FR 8000, Feb. 24, 1982]

§ 958.53 Handling for specified purposes.

Upon the basis of recommendations and information submitted by the committee, or other available information, the Secretary shall issue special regulations, or modify, suspend, or terminate requirements in effect pursuant to §§ 958.42, 958.52, 958.60, or any combination thereof, in order to facilitate the handling of onions for the following purposes whenever he finds that to do so will tend to effectuate the declared policy of the act:

(a) Shipments of onions for export;

(b) Shipments of onions for relief or to charitable institutions;

(c) Shipments of onions for livestock feed;

(d) Shipments of onions for planting; and

(e) Shipments of onions for other purposes which may be specified.

§ 958.54 Minimum quantities.

The committee, with the approval of the Secretary, may establish minimum quantities below which onion shipments will be free from the requirements in, or pursuant to, §§ 958.42, 958.52, 958.53, 958.60, or any combination thereof.

§ 958.55 Notification of regulations.

The Secretary shall notify the committee of each regulation issued, and of each amendment, modification, suspension, or termination thereof. The committee shall give reasonable notice thereof to handlers.

§ 958.56 Safeguards.

(a) The committee, with the approval of the Secretary, may prescribe adequate safeguards to prevent onions shipped,

(1) Pursuant to § 958.53 or § 958.54; or

(2) To commercial dehydrators for processing by such dehydrators into dehydrated onion products,

from entering channels of trade for other than the purpose authorized therefor.

(b) The committee, with the approval of the Secretary, may also prescribe rules and regulations governing the issuance, and the contents, of Certificates of Privilege if such certificates are prescribed as safeguards by the committee. Such safeguards may include requirements that:

(1) Handlers shall first file applications with the committee to ship such onions;

(2) Handlers shall obtain inspection provided by § 958.60, or pay the pro rata share of expenses provided by § 958.42, or both, in connection with such onions; and

(3) Handlers shall obtain Certificates of Privilege from the committee prior to effecting the particular onion shipment.

(c) The committee may rescind any Certificate of Privilege, or refuse to issue any Certificate of Privilege to any handler if proof is obtained that onions shipped by him for the purposes stated in the Certificate of Privilege were handled contrary to the provisions of this part.

(d) The Secretary shall have the right to modify, change, alter, or rescind any safeguards prescribed and any certificates issued by the committee pursuant to the provisions of this section.

(e) The committee shall make reports to the Secretary, as requested, showing the number of applications for such certificates, the quantity of onions covered by such applications, the number of such applications denied and certificates granted, the quantity of onions handled under duly issued certificates, and such other information as may be requested.

Inspection

§ 958.60 Inspection and certification.

(a) During any period in which shipments of onions are regulated pursuant to this subpart, no handler shall handle onions unless such onions are inspected by an authorized representative of the Federal-State Inspection Service, or such other inspection service as the Secretary shall designate

and are covered by a valid inspection certificate, except when relieved from such requirements pursuant to §§ 958.53, 958.54, or both.

(b) Regarding, resorting, or repacking any lot of onions shall invalidate prior inspection certificates insofar as the requirements of this section are concerned. No handler shall ship onions after they have been regarded, resorted, repacked or in any other way further prepared for market, unless such onions are inspected by an authorized representative of the Federal-State Inspection Service, or such other inspection service as the Secretary shall designate.

(c) Upon recommendation of the committee, and approval of the Secretary, all onions that are required to be inspected and certified in accordance with this section, shall be identified by appropriate seals, stamps, tags, or other identification to be furnished by the committee and affixed to the containers by the handler under the direction and supervision of the Federal-State, or Federal inspector, or the committee. Master containers may bear the identification instead of the individual containers within said master container.

(d) Insofar as the requirements of this section are concerned, the length of time for which an inspection certificate is valid may be established by the committee with the approval of the Secretary.

(e) When onions are inspected in accordance with the requirements of this section, a copy of each inspection certificate issued shall be made available to the committee by the inspection service.

Reports

§ 958.65 Reports.

Upon request of the committee, made with the approval of the Secretary, each handler shall furnish to the committee, in such manner and at such time as it may prescribe, such reports and other information as may be necessary for the committee to perform its duties under this part.

(a) Such reports may include, but are not necessarily limited to, the following: (1) The quantities of onions received by a handler; (2) the quantities disposed of by him, segregated as to the respective quantities subject to regulation and not subject to regulation; (3) the date of each such disposition and the identification of the carrier transporting such onions; and (4) identification of the inspection certificates relating to the onions which were handled pursuant to §§ 958.53 and 958.54.

(b) All such reports shall be held under appropriate protective classification and custody by the committee, or duly appointed employees thereof, so that the information contained therein which may adversely affect the competitive position of any handler in relation to other handlers will not be disclosed. Compilations of general reports from data submitted by handlers is authorized, subject to the prohibition of disclosure of individual handler's identities or operations.

(c) Each handler shall maintain for at least two succeeding years such records of the onions received, and of onions disposed of, by such handler as may be necessary to verify the reports he submits to the committee pursuant to this section.

Effective Time and Termination

§ 958.70 Effective time.

The provisions of this subpart, or any amendment thereto, shall become effective at such time as the Secretary may declare and shall continue in force until terminated in one of the ways specified in this subpart.

§ 958.71 Termination.

(a) The Secretary may at any time terminate the provisions of this subpart by giving at least one day's notice by means of a press release or in any other manner which he may determine.

(b) The Secretary may terminate or suspend the operations of any or all of the provisions of this subpart whenever he finds that such provisions do not tend to effectuate the declared policy of the act.

(c) The Secretary shall terminate the provisions of this subpart at the end of any fiscal period whenever he finds that such termination is favored

by a majority of producers who, during a representative period, have been engaged in the production for market of onions: *Provided*, That such majority has, during such representative period, produced for market more than fifty percent of the volume of such onions produced for market, but such termination shall be effective only if announced on or before May 31 of the then current fiscal period.

(d) The provisions of this subpart shall, in any event, terminate whenever the provisions of the act authorizing them cease to be in effect.

§ 958.72 Proceeding after termination.

(a) Upon the termination of the provisions of this subpart, the then functioning members of the committee shall continue as joint trustees, for the purpose of liquidating the affairs of the committee, of all the funds and property then in the possession, or under control, of the committee, including claims for any funds unpaid and property not delivered at the time of such termination. Action by said trusteeship shall require the concurrence of a majority of the said trustees.

(b) The said trustees shall continue in such capacity until discharged by the Secretary; shall, from time to time, account for all receipts and disbursements and deliver all property on hand, together with all books and records of the committee and of the trustees, to such person as the Secretary may direct; and shall, upon request of the Secretary, execute such assignments or other instruments necessary or appropriate to vest in such person full title and right to all of the funds, property, and claims vested in the committee or the trustees pursuant to this subpart.

(c) Any person to whom funds, property, or claims have been transferred or delivered by the committee or its members pursuant to this section, shall be subject to the same obligations imposed upon the members of the committee and upon the said trustees.

§ 958.73 Effect of termination or amendment.

Unless otherwise expressly provided by the Secretary, the termination of this subpart or of any regulation issued pursuant to this subpart, or the issuance of any amendment to either thereof, shall not (a) affect or waive any right, duty, obligation, or liability which shall have arisen or which may thereafter arise in connection with any provision of this subpart or of any regulation issued under this subpart; (b) release or extinguish any violation of this subpart or of any regulations issued under this subpart; or (c) affect or impair any rights or remedies of the Secretary or of any other person with respect to any such violations.

Miscellaneous Provisions

§ 958.81 Compliance.

No handler shall handle onions the handling of which has been prohibited or otherwise limited by the Secretary in accordance with provisions of this part; and no handler shall handle onions except in conformity to the provisions of this part.

§ 958.82 Right of the Secretary.

The members of the committee (including successors and alternates) and any agent or employee appointed or employed by the committee shall be subject to removal or suspension by the Secretary at any time. Each and every order, regulation, decision, determination, or other act of the committee shall be subject to the continuing right of the Secretary to disapprove of the same at any time. Upon such disapproval, the disapproved action of the said committee shall be deemed null and void except as to acts done in reliance thereon or in compliance therewith prior to such disapproval by the Secretary.

§ 958.83 Duration of immunities.

The benefits, privileges, and immunities conferred upon any person by virtue of this subpart shall cease upon the termination of this subpart, except with respect to acts done under and during the existence of this subpart.

§ 958.84 Agents.

The Secretary may, by designation in writing, name any person, including any officer or employee of the Government, or name any agency in the United States Department of Agriculture, to act as his agent or representative in connection with any of the provisions of this part.

§ 958.85 Derogation.

Nothing contained in this subpart is, or shall be construed to be, in derogation or in modification of the rights of the Secretary or of the United States to exercise any powers granted by the act or otherwise, or, in accordance with such powers, to act in the premises whenever such action is deemed advisable.

§ 958.86 Personal liability.

No member or alternate of the committee nor any employee or agent thereof, shall be held personally responsible, either individually or jointly with others, in any way whatsoever, to any handler or to any person for errors in judgment, mistakes, or other acts, either of commission or omission, as such member, alternate, employee, or agent, except for acts of dishonesty, wilful misconduct, or gross negligence.

§ 958.87 Separability.

If any provision of this subpart is declared invalid, or the applicability thereof to any person, circumstance, or thing is held invalid, the validity of the remainder of this subpart, or the applicability thereof to any other person, circumstance, or thing, shall not be affected thereby.

§ 958.88 Amendments.

Amendments to this subpart may be proposed, from time to time, by the committee or by the Secretary.

§ 958.89 Counterparts.

This agreement may be executed in multiple counterparts and when one counterpart is signed by the Secretary, all such counterparts shall constitute, when taken together, one and the same instrument as if all signatures were contained in one original.

[41 FR 29135, July 15, 1976]

§ 958.90 Additional parties.

After the effective date hereof, any handler may become a party to this agreement if a counterpart is executed by him and delivered to the Secretary. This agreement shall take effect as to such new contracting party at the time such counterpart is delivered to the Secretary, and the benefits, privileges, and immunities conferred by this agreement shall then be effective as to such new contracting party.

[41 FR 29135, July 15, 1976]

§ 958.91 Order with marketing agreement.

Each signatory handler requests the Secretary to issue, pursuant to the act, an order providing for regulating the handling of onions in the same manner as is provided for in this agreement.

The undersigned hereby authorizes the Director, or Acting Director, Fruit and Vegetable Division, Agricultural Marketing Service, United States Department of Agriculture, to correct any typographical errors which may have been made in this marketing agreement.

In witness whereof, the contracting parties, acting under the provisions of the act, for the purpose and subject to the limitations therein contained, and not otherwise, have hereto set their respective signatures and seals.

_____ _____

(Firm name)

By: _____

(Signature)[1]

_____

(Mailing address)

_____

(Title)

(Corporate Seal; if none, so state)

_____

(Date of execution)

[1]If one of the contracting parties to this agreement is a corporation my signature constitutes certification that I have the power granted to me by the Board of Directors to bind this corporation to the marketing agreement.

[41 FR 29136, July 15, 1976]

§ 958.160 Reestablishment of Districts.

(a) Pursuant to § 958.27(b) the following districts are reestablished:

(1) District No. 5 (Parma-Wilder area): That portion of Canyon County lying west and north of a line com-

mencing at the junction of the north boundary of Canyon County and Range 4, Township 12 east, thence south along this line to Soeck Road, thence west along Soeck Road one-fourth mile to Notus Road, thence south along Notus Road to Highway 19, thence west one mile along Highway 19 to Friends Road, thence south along Friends Road to Boundary Road, thence east one-half mile along Boundary Road to Plum Road, thence south along Plum Road to Homedale Road, thence west along Homedale Road to the western boundary of Canyon County.

(2) District No. 6 (Caldwell-Nampa-Homedale and southern Idaho area): That portion of Canyon County not included in District No. 5 plus all of the counties in the Idaho portion of the production area not included within District No. 1.

(b) Terms used in this section have the same meaning as when used in said marketing agreement and this part.

[39 FR 1601, Jan. 11, 1974]

NOTE: After January 1, 1979, "Budget of Expenses and Rate of Assessment" regulations (e.g., sections .200 through .299) and "Handling" regulations (e.g. sections .300 through .399) which are in effect for a year or less, will not be carried in the Code of Federal Regulations. For FEDERAL REGISTER citations affecting these regulations, see the "List of CFR Sections Affected" in this volume.

PART 959—ONIONS GROWN IN SOUTH TEXAS

Subpart—Order Regulating Handling

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AUTHORITY: Secs. 1-19, 48 Stat. 31, as amended; 7 U.S.C. 601-674.

Subpart—Order Regulating Handling

SOURCE: 26 FR 704, Jan. 25, 1961, unless otherwise noted. Redesignated at 26 FR 12751, Dec. 30, 1961.

DEFINITIONS

§ 959.1 Secretary.

"Secretary" means the Secretary of Agriculture of the United States, or any officer or employee of the Department to whom authority has heretofore been delegated, or to whom authority may be hereafter delegated, to act in his stead.

§ 959.2 Act.

"Act" means Public Act No. 10, 73d Congress, as amended and as reenacted and amended by the Agricultural Marketing Agreement Act of 1937, as amended (secs. 1-19, 48 Stat. 31, as amended; 7 U.S.C. 601-674).

§ 959.3 Person.

"Person" means an individual, partnership, corporation, association or any other business unit.

§ 959.4 Production area.

"Production area" means the counties of Val Verde, Kinney, Uvalde, Medina, Wilson, Karnes, Goliad, Victoria, Calhoun, Maverick, Zavala, Frio, Atascosa, Dimmit, La Salle, McMullen, Live Oak, Bee, Refugio, Webb, Duval, Jim Wells, San Patricio, Nueces, Zapata, Jim Hogg, Brooks, Kleberg, Kenedy, Starr, De Witt, Aransas, Hidalgo, Willacy, and Cameron, in the State of Texas.

§ 959.5 Onions.

"Onions" means all varieties of Allium cepa commonly known as onions grown within the production area and marketed dry.

§ 959.6 Handler.

"Handler" is synonymous with "shipper" and means any person (except a common or contract carrier of onions owned by another person) who handles onions or causes onions to be handled.

§ 959.7 Handle.

"Handle" or "ship" means to package, load, sell, transport, or in any way to place onions in the current of the commerce within the production area or between the production area and any point outside thereof. Such term shall not include the transportation, sale, or delivery of field-run onions to a person in the production area who is a registered handler.

[27 FR 227, Mar. 9, 1962, as amended at 34 FR 6440, Apr. 12, 1969]

§ 959.8 Registered handler.

"Registered handler" means any person with adequate facilities within the production area for preparing onions for commercial market, who customarily does so, and who is so recorded by the committee, or any person who has access to such facilities within the production area, and has recorded with the committee his ability and willingness to assume customary obligations of preparing onions for commercial market.

§ 959.9 Producer.

"Producer" means any person engaged in a proprietary capacity in the production of onions for market.

§ 959.10 Grading.

"Grading" is synonymous with "preparation for market" and means the sorting or separation of onions

into grades, sizes, and packs for market purposes.

§ 959.11 Grade and size.

"Grade" means any of the established grades of onions, and "size" means any of the established sizes of onions as defined and set forth in the United States Standards for Bermuda-Granex Type Onions (§§ 51.3195 to 51.3209 of this title) or any other United States Standards for onions, or amendments thereto or modifications thereof, or variations based thereon, recommended by the committee and approved by the Secretary.

§ 959.12 Pack.

"Pack" means a quantity of onions specified by grade, size, weight, or count, or by type or condition of container, or any combination of these recommended by the committee and approved by the Secretary.

[27 FR 2278, Mar. 9, 1962]

§ 959.13 Container.

"Container" means a box, bag, crate, hamper, basket, package, or any other receptacle used in the packaging, transportation, sale, shipment or other handling of onions.

§ 959.14 Varieties.

"Varieties" means and includes all classifications, subdivisions, or types of onions according to those definitive characteristics now or hereafter recognized by the United States Department of Agriculture or recommended by the committee and approved by the Secretary.

§ 959.15 Committee.

"Committee" means the South Texas Onion Committee, established pursuant to § 959.22.

§ 959.16 Fiscal period.

"Fiscal period" means the annual period beginning and ending on such dates as may be approved by the Secretary pursuant to recommendations of the committee.

§ 959.17 District.

"District" means each of the geographic divisions of the production area initially established pursuant to § 959.24 or as reestablished pursuant to § 959.25.

§ 959.18 Export.

"Export" means to ship onions to any destination which is not within the 48 contiguous States, or the District of Columbia, of the United States.

Committee

§ 959.22 Establishment and membership.

The South Texas Onion Committee, consisting of seventeen members, ten of whom shall be producers and seven of whom shall be handlers, is hereby established. For each member of the committee there shall be an alternate. Producer members and alternates shall not have a proprietary interest in or be employees of a handler organization.

§ 959.23 Term of office.

(a) The term of office of committee members and their respective alternates shall be for two years and shall begin as of August 1 and end as of July 31. The terms shall be so determined that about one-half of the total committee membership shall terminate each year.

(b) Committee members and alternates shall serve during the term of office for which they are selected and have qualified, or during that portion thereof beginning on the date on which they qualify during such term of office and continuing until the end thereof, and until their successors are selected and have qualified.

§ 959.24 Districts.

To determine a basis for selecting committee members, the following districts of the production area are hereby initially established:

District No. 1: (Coastal Bend) The Counties of Victoria, Calhoun, Goliad, Refugio, Bee, Live Oak, San Patricio, Aransas, Jim Wells, Nueces, Kleberg, Brooks, Kenedy, Duval, and McMullen in the State of Texas.

District No. 2: (Laredo) The Counties of Zapata, Webb, and Jim Hogg in the State of Texas.

District No. 3: (Lower Valley) The Counties of Cameron, Hidalgo, Starr, and Willacy in the State of Texas.

District No. 4: (Wilson-Karnes) The Counties of DeWitt, Wilson, Atascosa, and Karnes in the State of Texas.

District No. 5: (Winter Garden) The Counties of Val Verde, Frio, Kinney, Uvalde, Medina, Maverick, Zavala, Dimmit, and La Salle in the State of Texas.

§ 959.25 Redistricting.

The committee may recommend, and pursuant thereto, the Secretary may approve, the reapportionment of members among districts, and the reestablishment of districts within the production area. In recommending any such changes, the committee shall give consideration to:

(a) Shifts in onion acreage within the districts and within the production area during recent years;

(b) The importance of new production in its relation to existing districts;

(c) The equitable relationship of committee membership and districts;

(d) Economies to result for producers in promoting efficient administration due to redistricting or reapportionment of members within districts; and

(e) Other relevant factors. No change in districting or in apportionment of members within districts may become effective less than 30 days prior to the date on which terms of office begin each year and no recommendations for such redistricting or reapportionment may be made less than six months prior to such date.

§ 959.26 Selection.

The Secretary shall select members and respective alternates from districts established pursuant to § 959.24 or § 959.25. Initial selections shall be as follows:

District No. 1—3 producer members and alternates; 1 handler member and alternate.

District No. 2—2 producer members and alternates; 1 handler member and alternate.

District No. 3—3 producer members and alternates; 2 handler member and alternates.

District No. 4—1 handler member and alternate.

District No. 5—2 producer members and alternates; 2 handler members and alternates.

§ 959.27 Nomination.

The Secretary may select the members of the committee and alternates from nominations which may be made in the following manner:

(a) A meeting or meetings of producers and handlers shall be held for each district to nominate members and alternates for the committee. For nominations to the initial committee, the meetings may be sponsored by the United States Department of Agriculture or by any agency or group requested to do so by such department. For nominations for succeeding members and alternates on the committee, the committee shall hold such meetings or cause them to be held prior to June 15 of each year, after the effective date of this subpart, or by such other date as may be specified by the Secretary;

(b) At each such meeting at least one nominee shall be designated for each position as member and for each position as alternate member on the committee;

(c) Nominations for committee members and alternates shall be supplied to the Secretary in such manner and form as he may prescribe, not later than July 1 of each year, or by such other date as may be specified by the Secretary;

(d) Only producers may participate in designating producer nominees, and only handlers may participate in naming handler nominees. In the event a person is engaged in producing or handling onions in more than one district, such person shall elect the district within which he may participate as aforesaid in designating nominees;

(e) Regardless of the number of districts in which a person produces or handles onions, each such person is entitled to cast only one vote on behalf of himself, his agents, subsidiaries, affiliates, and representatives in designating nominees for committee members and alternates. An eligible voter's privilege of casting only one vote as aforesaid shall be construed to permit a voter to cast one vote for each position to be filled in the respective district in which he elects to vote.

[26 FR 12751, Dec. 30, 1961, as amended at 34 FR 6440, Apr. 12, 1969]

§ 959.28 Failure to nominate.

If nominations are not made within the time and in the manner specified in § 959.27, the Secretary may, without regard to nominations, select the committee members and alternates, which selection shall be on the basis of the representation provided for in §§ 959.22 through 959.26.

§ 959.29 Acceptance.

Any person selected as a committee member or alternate shall qualify by filing a written acceptance within ten days after being notified of such selection.

§ 959.30 Vacancies.

To fill committee vacancies, the Secretary may select such members or alternates from unselected nominees on the current nominee list from the district involved, or from nominations made in the manner specified in § 959.27. If the names of nominees to fill any such vacancy are not made available to the Secretary within 30 days after such vacancy occurs, such vacancy may be filled without regard to nominations, which selection shall be made on the basis of the representation provided for in §§ 959.24 to 959.26.

§ 959.31 Alternate members.

An alternate member of the committee shall act in the place and stead of the member for whom he is an alternate, during such member's absence or when designated to do so by the member for whom he is an alternate. In the event both a member of the committee and his alternate are unable to attend a committee meeting, the member or his alternate or the committee (in that order) may designate another alternate from the same district and the same group (handler or grower) to serve in such member's place and stead. In the event of the death, removal, resignation, or disqualification of a member, his alternate shall act for him until a successor of such member is selected and has qualified. The committee may request the attendance of alternates at any or all meetings, notwithstanding the expected or actual presence of the respective members.

[27 FR 2278, Mar. 9, 1962]

§ 959.32 Procedure.

(a) Eleven members of the committee shall be necessary to constitute a quorum. Nine concurring votes, or two-thirds of the votes cast, whichever is greater, shall be required to pass any motion or approve any committee action. At assembled meetings all votes shall be cast in person.

(b) The committee may meet by telephone, telegraph, or other means of communication and any vote at such a meeting shall be promptly confirmed in writing. On such occasions unanimous vote of committee members voting will be required to approve any action.

§ 959.33 Expenses and compensation.

Committee members and alternates when acting on committee business shall be reimbursed for reasonable expenses necessarily incurred by them in the performance of their duties and in the exercise of their powers under this part. In addition they may receive compensation at a rate to be determined by the committee and approved by the Secretary, not to exceed $10 for each day, or portion thereof, spent in attending to committee business.

§ 959.34 Powers.

The committee shall have the following powers:

(a) To administer the provisions of this part in accordance with its terms and provisions;

(b) To make rules and regulations to effectuate the terms and provisions of this part;

(c) To receive, investigate, and report to the Secretary complaints of violation of the provisions of this part; and

(d) To recommend to the Secretary amendments to this part.

§ 959.35 Duties.

It shall be, among other things, the duty of the committee:

(a) As soon as practicable after the beginning of each term of office, to

meet and organize, to select a chairman and such other officers as may be necessary, to select subcommittees of committee members and alternates, and to adopt such rules and regulations for the conduct of its business as it may deem advisable;

(b) To act as intermediary between the Secretary and any producer or handler;

(c) To furnish to the Secretary such available information as he may request;

(d) To appoint such employees, agents, and representatives as it may deem necessary and to determine the salaries and define the duties of each such person, and to protect the handling of committee funds through fidelity bonds for employees;

(e) To investigate from time to time and to assemble data on the growing, harvesting, shipping, and marketing conditions with respect to onions;

(f) To prepare a marketing policy;

(g) To recommend marketing regulations to the Secretary;

(h) To recommend rules and procedures for, and to make determinations in connection with, issuance of certificates of privilege;

(i) To keep minutes, books, and records which clearly reflect all of the acts and transactions of the committee, and such minutes, books and records shall be subject to examination at any time by the Secretary or by his authorized agent or representative. Minutes of each committee meeting shall be reported promptly to the Secretary;

(j) At the beginning of each fiscal period, to prepare a budget of its expenses for such fiscal period, together with a report thereon;

(k) To cause the books of the committee to be audited by a competent accountant at least once each fiscal period, and at such other time as the committee may deem necessary or as the Secretary may request. The report of such audit shall show the receipt and expenditure of funds collected pursuant to this part. A copy of each such report shall be made available at the principal office of the committee for inspection by producers and handlers, and a copy of each such report shall be furnished the Secretary;

(l) To consult, cooperate, and exchange information with other marketing agreement committees and other individuals or agencies in connection with all proper committee activities and objectives under this part.

Expenses and Assessments

§ 959.40 Expenses.

The committee is authorized to incur such expenses as the Secretary may find are reasonable and likely to be incurred during each fiscal period for its maintenance and functioning, and for such purposes as the Secretary, pursuant to this subpart, determines to be appropriate. Handlers shall share expenses on the basis of a fiscal period. Each handler's share of such expenses shall be proportionate to the ratio between the total quantity of onions handled by him as the first handler thereof during a fiscal period and the quantity of onions handled by all handlers as first handlers thereof during such fiscal period.

§ 959.41 Budget.

As soon as practicable after the beginning of each fiscal period and as may be necessary thereafter, the committee shall prepare an estimated budget of income and expenditures necessary for the administration of this part. The committee may recommend a rate of assessment calculated to provide adequate funds to defray its proposed expenditures. The committee shall present such budget to the Secretary with an accompanying report showing the basis for its calculations.

§ 959.42 Assessments.

(a) The funds to cover the committee's expenses shall be acquired by the levying of assessments upon handlers as provided in this subpart. Each handler who first handles onions, which are regulated under this part, shall pay assessments to the committee upon demand, which assessments shall be in payment of such handler's pro rata share of the committee's expenses.

(b) Assessments shall be levied upon handlers at rates established by the Secretary. Such rates may be estab-

lished upon the basis of the committee's recommendations and other available information. Such rates may be applied to specified containers used in the production area.

(c) At any time during, or subsequent to, a given fiscal period the committee may recommend the approval of an amended budget and an increase in the rate of assessment. Upon the basis of such recommendations, or other available information, the Secretary may approve an amended budget and increase the rate of assessment. Such increase shall be applicable to all onions which were regulated under this part and which were handled by the first handlers thereof during such fiscal period.

(d) The payment of assessments for the maintenance and functioning of the committee may be required under this part throughout the period it is in effect irrespective of whether particular provisions thereof are suspended or become inoperative.

§ 959.43 Accounting.

(a) Assessments collected in excess of expenses incurred shall be accounted for in accordance with one of the following:

(1) Excess funds not retained in a reserve, as provided in paragraph (a)(2) of this section shall be refunded proportionately to the persons from whom they were collected.

(2) The committee, with the approval of the Secretary, may carry over excess funds into subsequent fiscal periods as reserves: *Provided,* That funds already in reserves do not equal approximately two fiscal periods' expenses. Such reserve funds may be used (i) to defray expenses during any fiscal period prior to the time assessment income is sufficient to cover such expenses, (ii) to cover deficits incurred during any fiscal period when assessment income is less than expenses, (iii) to defray expenses incurred during any period when any or all provisions of this part are suspended or are inoperative, (iv) to cover necessary expenses of liquidation in the event of termination of this part. Upon such termination, any funds not required to defray the necessary expenses of liquidation shall be disposed of in such manner as the Secretary may determine to be appropriate. To the extent practical, such funds shall be returned pro rata to the persons from whom such funds were collected.

(b) All funds received by the committee pursuant to the provisions of this part shall be used solely for the purpose specified in this part and shall be accounted for in the manner provided for in this part. The Secretary may at any time require the committee and its members to account for all receipts and disbursements.

(c) Upon the removal or expiration of the term of office of any member of the committee, such member shall account for all receipts and disbursements and deliver all property and funds in his possession to the committee, and shall execute such assignments and other instruments as may be necessary or appropriate to vest in the committee full title to all of the property, funds, and claims vested in such member pursuant to this part.

(d) The committee may make recommendations to the Secretary for one or more of the members thereof, or any other person, to act as a trustee for holding records, funds, or any other committee property during periods of suspension of this subpart, or during any period or periods when regulations are not in effect and if the Secretary determines such action appropriate, he may direct that such person or persons shall act as trustee or trustees for the committee.

[26 FR 12751, Dec. 30, 1961, as amended at 34 FR 6440, Apr. 12, 1969]

Research and Development

§ 959.48 Research and development.

The committee, with the approval of the Secretary, may establish or provide for the establishment of production research, marketing research, and development projects designed to assist, improve, or promote the marketing, distribution, consumption or efficient production of onions. The expenses of such projects shall be paid from funds collected pursuant to § 959.42.

[38 FR 31516, Nov. 15, 1973]

Regulations

§ 959.50 Marketing policy.

(a) At the beginning of each season, and as the Secretary may require, the committee shall prepare a marketing policy. Such policy shall indicate the data on onion supplies and demand on which the committee bases its judgments and recommendations. It shall indicate also the kind or types of regulations contemplated during the ensuing season, and, to the extent practical, shall include recommendations for specific regulations. Notice of such marketing policy shall be given to producers, handlers, and other interested parties by bulletins, newspapers, or other appropriate media, and copies thereof shall be submitted to the Secretary and shall be available generally.

(b) Marketing policy statements relating to recommendations for regulations shall give appropriate consideration to onion supplies for the season, with special consideration to:

(1) Estimates of total supplies, including grade, size, and quality thereof, in the production area;

(2) Estimates of supplies in the competing areas;

(3) Market prices by grades, sizes, containers, and packs;

(4) Estimates of supplies of competing commodities;

(5) Anticipated marketing problems;

(6) Level and trend of consumer income; and

(7) Other relevant factors.

§ 959.51 Recommendations for regulations.

Upon complying with the requirements of § 959.50 the committee may recommend regulations to the Secretary whenever it finds that such regulations as are provided for in this subpart will tend to effectuate the declared policy of the act.

§ 959.52 Issuance of regulations.

(a) The Secretary shall limit the handling of onions by regulations specified in this section whenever he finds from the recommendations and information submitted by the committee, or from other available information, that such regulations would tend to effectuate the declared policy of the act.

(b) Such regulations may:

(1) Limit in any or all portions of the production area the handling of particular grades, sizes, qualities or packs, or any combination thereof, of any or all varieties of onions during any period;

(2) Limit the handling of particular grades, sizes, qualities, or packs of onions differently for different varieties, for different containers, for different portions of the production area, or any combination of the foregoing, during any period;

(3) Limit the handling of onions by establishing, in terms of grades, sizes, or both, minimum standards of quality and maturity;

(4) Fix the size, capacity, weight, dimensions, or pack of the container or containers which may be used in the packaging, transportation, sale, preparation for market, shipment, or other handling of onions;

(5) Establish holidays by prohibiting throughout the entire production area, the packaging or loading, or both, of onions on Sundays;

(6) Prohibit the packaging or loading, or both, of onions except during specified consecutive hours of any calendar day or days: *Provided*, That, any handler may, upon such notice to the committee as it may prescribe with approval of the Secretary, package or load onions during a different period in such day consisting of the same number of consecutive hours: *Provided further*, That any handler who, due to conditions specified in regulations established by the committee with the approval of the Secretary as being beyond a handler's reasonable control, is prevented for more than one of such consecutive hours from so packaging or loading onions may, in accordance with such regulations, obtain permission from the committee to package or load onions, or both, during a comparable number of additional hours in the same day or a later day as specified by the committee.

(c) Regulations issued hereunder may be amended, modified, suspended, or terminated whenever it is determined:

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(1) That such action is warranted upon recommendation of the committee or other available information;

(2) That such action is essential to provide relief from inspection, assessment, or regulations under paragraph (b) of this section for minimum quantities less than customary commercial transactions; or

(3) That regulations issued hereunder no longer tend to effectuate the declared policy of the act.

(d) No handler may handle onions that were packaged or loaded or both during any period when such packaging or loading or both was prohibited by any regulation issued pursuant to paragraphs (b) (5) or (6) of this section, except such onions as were exempted thereunder.

[26 FR 704, Jan. 25, 1961. Redesignated at 26 FR 12751, Dec. 30, 1961, and amended at 34 FR 6440, Apr. 12, 1969]

§ 959.53 Handling for special purposes.

Regulations in effect pursuant to §§ 959.42, 959.52, or 959.60 may be modified, suspended, or terminated to facilitate handling of onions for:

(a) Relief or charity;

(b) Experimental purposes;

(c) Export; and

(d) Other purposes which may be recommended by the committee and approved by the Secretary.

§ 959.54 Safeguards.

The committee, with the approval of the Secretary, may establish through rules such requirements as may be necessary to establish that shipments made pursuant to § 959.53 were handled and used for the purpose stated.

§ 959.55 Notification of regulation.

The Secretary shall promptly notify the committee of regulations issued or of any modification, suspension, or termination thereof. The committee shall give reasonable notice thereof to handlers.

Inspection

§ 959.60 Inspection and certification.

(a) Whenever the handling of onions is regulated pursuant to § 959.52, or at other times when recommended by the committee and approved by the Secretary, no handlers shall handle onions unless they are inspected by an authorized representative of the Federal or Federal-State Inspection Service and are covered by a valid inspection certificate, except when relieved from such requirements pursuant to § 959.52(c) or § 959.54, or paragraph (b) of this section.

(b) Regarding, resorting, or repacking any lot of onions shall invalidate any prior inspection certificate insofar as the requirements of this section are concerned. No handler shall handle onions after they have been regraded, resorted, or repacked unless such onions are inspected by an authorized representative of the Federal or Federal-State Inspection Service. Such inspection requirements on regraded, resorted, or repacked onions may be modified, suspended, or terminated upon recommendation by the committee and approval of the Secretary.

(c) Upon recommendation of the committee and approval by the Secretary, any or all onions so inspected and certified shall be identified by appropriate seals, stamps, or tags to be affixed to the containers by the handler under the direction and supervision of a Federal or Federal-State Inspector or the Committee. Master containers may bear the identification instead of the individual containers within said master container.

(d) At any time this marketing order is inoperative, compulsory inspection is not required.

(e) Insofar as the requirements of this section are concerned, the length of time for which an inspection certificate is valid may be established by the committee with the approval of the Secretary.

(f) When onions are inspected in accordance with the requirements of this section, a copy of each inspection certificate issued shall be made available to the committee by the Inspection Service.

(g) The committee may recommend and the Secretary may require that no handler shall transport or cause the transportation of onions by motor vehicle or by other means unless such shipment is accompanied by a copy of the inspection certificate issued thereon, or other document authorized by

the committee to indicate that such inspection has been performed. Such certificate or document shall be surrendered to such authority as may be designated.

Reports

§ 959.80 Reports.

Upon request of the committee, made with the approval of the Secretary, each handler shall furnish to the committee, in such manner or form and at such time as it may prescribe, such reports and other information as may be necessary for the committee to perform its duties under this part.

(a) Such reports may include, but are not necessarily limited to, the following: (1) The quantities of onions received by a handler; (2) the quantities disposed of by him segregated as to the respective quantities subject to regulation and not subject to regulation; (3) the date of each such disposition and the identification of the carrier transporting such onions; and (4) identification of the inspection certificates relating to the onions which were handled pursuant to § 959.52 or § 959.53, or both.

(b) All such reports shall be held under appropriate protective classification and custody by the committee, or duly appointed employees thereof, so that the information contained therein which may adversely affect the competitive position of any handler in relation to other handlers will not be disclosed. Compilations of general reports from data submitted by handlers is authorized, subject to the prohibition of disclosure of individual handlers' identities or operations.

(c) Each handler shall maintain for at least two succeeding years such records and documents on onions received and onions disposed of by him as may be necessary to verify reports he submits to the committee pursuant to this section.

Compliance

§ 959.81 Compliance.

Except as provided in this subpart, no handler shall handle onions, the handling of which has been prohibited by the Secretary in accordance with provisions of this subpart, or the rules and regulations thereunder, and no handler shall handle onions except in conformity to the provisions of this subpart.

Miscellaneous Provisions

§ 959.82 Right of the Secretary.

The members of the committee (including successors and alternates), and any agent or employee appointed or employed by the committee, shall be subject to removal or suspension by the Secretary at any time. Each and every order, regulation, decision, determination or other act of the committee shall be subject to the continuing right of the Secretary to disapprove of the same at any time. Upon such disapproval, the disapproved action of the said committee shall be deemed null and void, except as to acts done in reliance thereon or in compliance therewith prior to such disapproval by the Secretary.

§ 959.83 Effective time.

The provisions of this subpart, or any amendment thereto, shall become effective at such time as the Secretary may declare and shall continue in force until terminated in one of the ways specified in this subpart.

§ 959.84 Termination.

(a) The Secretary may, at any time, terminate the provisions of this subpart by giving at least one day's notice by means of a press release or in any other manner which he may determine.

(b) The Secretary shall terminate or suspend the operation of any or all of the provisions of this subpart whenever he finds that such provisions do not tend to effectuate the declared policy of the act.

(c) The Secretary shall terminate the provisions of this subpart at the end of any fiscal period whenever he finds that such termination is favored by a majority of producers who, during a representative period, have been engaged in the production of onions for market: *Provided*, That such majority has, during such representative period, produced for market

more than fifty percent of the volume of such onions produced for market.

(d) The provisions of this subpart shall, in any event, terminate whenever the provisions of the act authorizing them cease to be in effect.

§ 959.85 Proceeding after termination.

(a) Upon the termination of the provisions of this subpart the then functioning members of the committee shall continue as joint trustees for the purpose of settling the affairs of the committee by liquidating all of the funds and property then in the possession of or under control of the committee, including claims for any funds unpaid or property not delivered at the time of such termination. Action by said trusteeship shall require the concurrence of a majority of the said trustees.

(b) The said trustees shall continue in such capacity until discharged by the Secretary; shall, from time to time, account for all receipts and disbursements and deliver all property on hand, together with all books and records of the committee and of the trustees, to such person as the Secretary may direct; and shall, upon request of the Secretary, execute such assignments or other instruments necessary or appropriate to vest in such persons full title and right to all of the funds, property, and claims vested in the committee or the trustees pursuant to this subpart.

(c) Any person to whom funds, property, or claims have been transferred or delivered by the committee or its members, pursuant to this section, shall be subject to the same obligations imposed upon the members of the committee and upon the said trustees.

§ 959.86 Effect of termination or amendments.

Unless otherwise expressly provided by the Secretary, the termination of this subpart or of any regulation issued pursuant to this subpart, or the issuance of any amendments to either thereof, shall not (a) affect or waive any right, duty, obligation, or liability which shall have arisen or which may thereafter arise in connection with any provisions of this subpart or any regulation issued under this subpart, or (b) release or extinguish any violation of this subpart or of any regulation issued under this subpart, or (c) affect or impair any rights or remedies of the Secretary or of any other person with respect to any such violation.

§ 959.87 Duration of immunities.

The benefits, privileges, and immunities conferred upon any person by virtue of this subpart shall cease upon the termination of this subpart, except with respect to acts done under and during the existence of this subpart.

§ 959.88 Agents.

The Secretary may, by designation in writing, name any person, including any officer or employee of the United States Department of Agriculture, to act as his agent or representative in connection with any of the provisions of this subpart.

§ 959.89 Derogation.

Nothing contained in this subpart is, or shall be construed to be, in derogation or in modification of the rights of the Secretary or of the United States to exercise any powers granted by the act or otherwise, or, in accordance with such powers, to act in the premises whenever such action is deemed advisable.

§ 959.90 Personal liability.

No member or alternate of the committee nor any employee or agent thereof, shall be held personally responsible, either individually or jointly with others, in any way whatsoever, to any handler or to any person for errors in judgment, mistakes, or other acts, either of commission or omission, as such member, alternate, agent, or employee, except for acts of dishonesty, willful misconduct, or gross negligence.

§ 959.91 Separability.

If any provision of this subpart is declared invalid, or the applicability thereof to any person, circumstance, or thing is held invalid, the validity of the remainder of this subpart, or the

applicability thereof to any other person, circumstance, or thing, shall not be affected thereby.

§ 959.92 Amendments.

Amendments to this subpart may be proposed, from time to time, by the committee or by the Secretary.

Subpart—Rules and Regulations

SOURCE: 26 FR 2560, Mar. 25, 1961, unless otherwise noted. Redesignated at 26 FR 12751, Dec. 30, 1961.

GENERAL

§ 959.100 Order.

Order means Order No. 959 (§§ 959.1 to 959.92; 26 FR 704) regulating the handling of onions grown in South Texas.

§ 959.101 Terms.

The terms used in this subpart shall have the same meaning as when used in the order.

§ 959.102 Communications.

Unless otherwise provided in the order, or by specific direction of the committee, all reports, applications, submittals, requests and communications in connection with the order shall be addressed to the South Texas Onion Committee, at its principal office.

§ 959.103 Registered handler.

For purposes of this part any person who operates an established packing house within the production area with commonly accepted adequate facilities for grading and packing onions for market, and who customarily buys onions from producers for grading, packing, and marketing shall be recorded by the committee as a registered handler. Any other person who wishes to be listed as a registered handler may make application for registration on forms furnished by the committee. If such applicant has facilities available to him that are determined by the committee to be adequate for grading and packing onions for market, and he assumes responsibility for inspection of onions handled by him, and for assessments thereon, he may be approved and recorded as a registered handler. If the committee determines from the available information that the applicant is not entitled to be registered with the committee, he shall be so informed by written notice stating the reason for denial of his application. Any registration of a handler pursuant to this section may be canceled by the committee under circumstances which would have justified denial of his application. Any handler whose registration has been canceled shall be so informed by written notice thereof stating the reason therefor. The committee shall also notify producers of each such cancellation of handler registration through committee bulletins or published notice in local newspapers of general distribution, or both.

§ 959.104 Fiscal period.

The fiscal period which extends from February 1, 1963, through January 31, 1964 (28 FR 3852), shall end July 31, 1963. Beginning August 1, 1963, and thereafter, the fiscal period shall begin August 1 of each year and end July 31 of the following year, both dates inclusive.

[29 FR 600, Jan. 24, 1964]

§ 959.110 Reestablishment of districts.

(a) Pursuant to § 959.25, the counties of De Witt, Wilson, Atascosa, and Karnes (currently District No. 4) and the counties of Val Verde, Frio, Kinney, Uvalde, Medina, Maverick, Zavala, Dimmit, and La Salle (currently District No. 5) are reestablished as District No. 4.

(b) The new district is hereby established in the current fiscal period only for the purpose of making nominations of committee members for the coming fiscal period. The new district is established as an operating entity beginning on August 1, 1975.

(c) The remaining three districts continue unchanged as follows:

(1) District No. 1: (Coastal Bend) The Counties of Victoria, Calhoun, Goliad, Refugio, Bee, Live Oak, San Patricio, Aransas, Jim Wells, Nueces, Kleburg, Brooks, Kenedy, Duval, and McMullen.

(2) District No. 2: (Laredo) The Counties of Zapata, Webb, and Jim Hogg.

(3) District No. 3: (Lower Valley) The Counties of Cameron, Hidalgo, Starr, and Willacy.

[40 FR 16212, Apr. 10, 1975]

§ 959.111 Reapportionment of Committee membership.

Pursuant to § 959.25, the membership representation of the South Texas Onion Committee shall be reapportioned among the districts of the production area so as to provide the following members and their respective alternates:

District No. 1—Two producer members and one handler member.
District No. 2—One producer member and one handler member.
District No. 3—Four producer members and three handler members.
District No. 4—Three producer members and two handler members.

For each member there shall be a respective alternate selected on the same basis as the member.

[40 FR 16212, Apr. 10, 1975]

SAFEGUARDS

§ 959.120 Policy.

Whenever shipments of onions for special purposes pursuant to § 959.53 are relieved in whole or in part from regulations issued under § 959.52, the committee may require information and evidence on the manner, methods, and timing of such shipments as safeguards against the entry of any such onions in trade channels other than those for which intended. Such information and evidence shall include requirements set forth below with respect to Certificates of Privilege.

§ 959.121 Qualification.

Before handling onions for special purposes which do not meet regulations issued pursuant to § 959.52, a handler, when required by such regulations, must qualify with the committee to handle shipments for special purposes. To qualify he must (a) apply for and receive a Certificate of Privilege indicating his intent to so handle onions, (b) agree to comply with reporting and other requirements set forth in §§ 959.120 to 959.125, inclusive, with respect to such shipments, and (c) receive approval of the committee or its duly authorized agents, to so handle onions. Such approval will be based upon evidence furnished in his application for Certificate of Privilege and other information available to the committee.

§ 959.122 Application.

(a) Applications for a Certificate of Privilege shall be made on forms furnished by the committee. Each application may contain, but need not be limited to, the name and address of the handler; the quantity by grade, size, and quality of the onions to be shipped; the mode of transportation; the consignee; the destination; the purpose for which the onions are to be used; and certification to the United States Department of Agriculture and to the committee as to the truthfulness of the information shown thereon, and any other appropriate information or documents deemed necessary by the committee or its duly authorized agents for the purposes stated in § 959.120.

(b) The committee may require each handler making shipments of onions for export to include with his application a copy of the Department of Commerce Shippers Export Declaration Form No. 7525-V applicable to such shipment.

§ 959.123 Approval.

The committee or its duly authorized agents shall give prompt consideration to each application for a Certificate of Privilege. Approval of an application, based upon the determination as to whether the information contained therein and other information available to the committee supports approval, shall be evidenced by the issuance of a Certificate of Privilege to the applicant. Each certificate shall cover a specified period and specified qualities and quantities of onions to be sold or transported to a designated consignee for the purpose declared.

§ 959.124 Reports.

Each handler of onions shipping under Certificates of Privilege shall supply the committee with reports as requested by the committee, or its duly authorized agents, showing the name and address of the shipper; the car or truck identification; the loading point; destination; consignee; the inspection certificate number when inspection is required; and any other information deemed necessary by the committee.

§ 959.125 Disqualification.

The committee from time to time may conduct surveys of handling of onions for special purposes requiring Certificates of Privilege to determine whether handlers are complying with the requirements and regulations applicable to such certificates. Whenever the committee finds that the handler or consignee is failing to comply with requirements and regulations applicable to handling of onions in special outlets and requiring such certificates, a Certificate or Certificates of Privilege issued such handler may be rescinded and subsequent certificates denied. Such disqualification shall apply to, and not exceed, a reasonable period of time as determined by the committee, but in no event shall it extend beyond the date of the succeeding fiscal period. Any handler who has a Certificate rescinded or denied may appeal to the committee in writing for reconsideration of his disqualification.

§ 959.126 Handling of culls.

(a) The handling of culls, i.e., onions which fail to meet the grade, size and quality requirements established under § 959.52(b) of this part, is prohibited, unless such onions are:

(1) Mechanically mutilated at the packing shed rendering them unsuitable for fresh market;

(2) Handled for special purpose outlets approved under § 959.53 of this part; or

(3) Handled for canning or freezing.

(b) As a safeguard against culls entering fresh market channels each handler of culls under paragraphs (a)(2) or (3) of this section shall apply for and obtain a certificate from the committee which shall require the handler to furnish such reports or other information as the committee may request.

[28 FR 60, Jan. 3, 1963]

NOTE: After January 1, 1979 "Budget of Expenses and Rate of Assessment" regulations (e.g. sections .200 through. 299) and "Handling" regulations (e.g. sections .300 through .399) which are in effect for a year or less, will not be carried in the Code of Federal Regulations. For FEDERAL REGISTER citations affecting these regulations, see the "List of CFR Sections Affected" in this volume.

PART 965—TOMATOES GROWN IN THE LOWER RIO GRANDE VALLEY IN TEXAS

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AUTHORITY: Secs. 1-19, 48 Stat. 31, as amended; 7 U.S.C. 601-674.

Subpart—Order Regulating Handling

SOURCE: 24 FR 2425, Mar. 28, 1959, unless otherwise noted. Redesignated at 26 FR 12751, Dec. 30, 1961.

DEFINITIONS

§ 965.1 Secretary.

"Secretary" means the Secretary of Agriculture of the United States, or any officer or employee of the Department to whom authority has heretofore been delegated, or to whom authority may hereafter be delegated, to act in his stead.

§ 965.2 Act.

"Act" means Public Act No. 10, 73d Congress, as amended and as reenacted and amended by the Agricultural Marketing Agreement Act of 1937, as amended (48 Stat. 31, as amended; 7 U.S.C. 601 et seq.; 68 Stat. 906, 1047).

§ 965.3 Person.

"Person" means an individual, partnership, corporation, association, or any other business unit.

§ 965.4 Production area.

"Production area" means all territory in the counties of Cameron, Hidalgo, Starr, and Willacy in the State of Texas.

§ 965.5 Tomatoes.

"Tomatoes" means all varieties of the edible fruit (lycopersicon esculentum) commonly known as tomatoes and grown within the production area.

§ 965.6 Handler.

"Handler" is synonymous with "shipper" and means any person (except a common or contract carrier of tomatoes owned by another person) who handles tomatoes or causes tomatoes to be handled.

§ 965.7 Handle.

"Handle" or "ship" means to transport, sell, or in any way to place tomatoes in the current of the commerce between the production area and any point outside thereof: *Provided*, That such terms will not include the transportation, sale, or delivery within the production area of tomatoes to a handler who is registered as such with the committee.

§ 965.8 Producer.

"Producer" means any person engaged in a proprietary capacity in the production of tomatoes for market.

§ 965.9 Producer-handler.

"Producer-handler" means a person who buys and sells tomatoes grown in the production area, owns, or operates a packing shed which packs such tomatoes, and is also a producer of tomatoes in the production area.

§ 965.10 Grade and size.

"Grade" means any one of the established grades of tomatoes and "size" means any one of the established sizes of tomatoes as defined and set forth in U.S. Standards for Fresh Tomatoes (§§ 51.1855 to 51.1877 of this title) or U.S. Consumer Standards for Fresh Tomatoes (§§ 51.1900 to 51.1913 of this title), both issued by the United States Department of Agriculture, or amendments thereto, or modifications thereof, or variations based thereon, recommended by the committee and approved by the Secretary.

§ 965.11 Pack.

"Pack" means any of the packs of tomatoes as defined and set forth in the United States Standards for Fresh Tomatoes issued by the United States Department of Agriculture (§§ 51.1855 to 51.1877 of this title), or any pack of tomatoes recommended by the committee and approved by the Secretary.

§ 965.12 Maturity.

"Maturity" means specific degrees of ripeness for tomatoes as established by the committee with approval of the Secretary.

§ 965.13 Container.

"Container" means a box, bag, crate, hamper, basket, package, tube, or any other type of unit used in the packaging, transportation, sale, shipment, or handling of tomatoes.

§ 965.14 Varieties.

"Varieties" means and includes all classifications, subdivisions, or types of tomatoes according to those definitive characteristics now or hereafter recognized by the United States Department of Agriculture or recommended by the committee, and approved by the Secretary.

§ 965.15 Committee.

"Committee" means the Texas Valley Tomato Committee, established pursuant to § 965.22.

§ 965.16 Fiscal period.

"Fiscal period" means the annual period beginning March 1, and ending on the last day of February of the following year, or such annual beginning and ending dates as may be approved by the Secretary pursuant to recommendations of the committee.

§ 965.17 District.

"District" means each of the geographic divisions of the production area initially established pursuant to § 965.24 or as reestablished pursuant to § 965.25.

§ 965.18 Export.

"Export" means shipment of tomatoes beyond the boundaries of continental United States.

COMMITTEE

§ 965.22 Establishment and membership.

(a) The Texas Valley Tomato Committee is hereby established, consisting of 10 members, including six producers, three handlers, and one public member. Each shall have an alternate who shall have the same qualifications as the member.

(b) Each committee member and alternate shall be a resident of the production area. Industry members shall be producers or handlers, or officers or employees of a producer or handler or of a producers' cooperative marketing organization, in the district for which selected. Those representing a producers' marketing cooperative shall be eligible to serve as a handler member or alternate. The public member shall be a person who has no financial interest in the commercial production or marketing of tomatoes except as a consumer, and shall not be a director, officer or employee of any firm so engaged.

[45 FR 82910, Dec. 17, 1980]

§ 965.23 Term of office.

(a) The term of office of committee members and their respective alternates shall be for one year and shall begin as of August 1 and end as of July 31.

(b) Committee members and alternates shall serve during the term of office for which they are selected and have qualified, or during that portion thereof beginning on the date on which they qualify during such term of office and continuing until the end thereof, and until their successors are selected and have qualified.

§ 965.24 Districts.

For the purpose of determining the basis for selecting committee members and alternates, the entire production area shall be considered a single district. However, the area may be redistricted pursuant to § 965.25.

[45 FR 82910, Dec. 17, 1980]

§ 965.25 Redistricting.

The committee may recommend, and pursuant thereto, the Secretary may approve, the reapportionment of members among districts, and the reestablishment of districts within the production area. In recommending any such changes, the committee shall give consideration to: (a) Shifts in tomato acreage within districts and within the production area during recent years; (b) the importance of new production in its relation to existing districts; (c) the equitable relationship of committee membership and districts; (d) economies to result for producers in promoting efficient administration due to redistricting or reapportionment of members within districts; and (e) other relevant factors. No change in districting or in apportionment of members within districts may become effective less than 30 days prior to the date on which terms of office begin each year and no recommendations for such redistricting or reapportionment may be made less than six months prior to such date.

§ 965.26 Selection.

The Secretary shall select the committee members and alternates to reflect existing representation established pursuant to §§ 965.24 or 965.25.

[45 FR 82910, Dec. 17, 1980]

§ 965.27 Nomination.

The Secretary may select the members of the committee and alternates from nominations which may be made in the following manner:

(a) A meeting or meetings of producers and handlers shall be held in each district to nominate members and alternates on the committee. The committee shall hold such meetings or cause them to be held prior to June 15 of each year, or by such other date as may be specified by the Secretary.

(b) At each such meeting at least one nominee shall be designated for each position as member and for each position as alternate member on the committee.

(c) Nominations for committee members and alternates shall be supplied to the Secretary in such manner and form as he may prescribe, not later than July 15 of each year, or by such other date as may be specified by the Secretary.

(d) Only producers may participate in designating producer nominees, and only handlers may participate in naming handler nominees. In the event a person is engaged in producing tomatoes in more than one district, such person shall elect the district within which to participate in designating nominees.

(e) Regardless of the number of districts in which a person produces tomatoes, each such person is entitled to cast only one vote on behalf of himself, his agents, subsidiaries, affiliates, and representatives in designating nominees for committee members and alternates. An eligible voter's privilege of casting only one vote as aforesaid shall be construed to permit a voter to cast one vote for each position to be filled in the respective district in which he elects to vote.

(f) The public member and alternate shall be nominated by the committee. The committee shall prescribe such additional qualifications, administrative rules and procedures for selection and voting for each candidate as it deems necessary and as the Secretary approves.

[24 FR 2425, Mar. 28, 1959. Redesignated at 26 FR 12751, Dec. 30, 1961, and amended at 45 FR 82910, Dec. 17, 1980]

§ 965.28 Failure to nominate.

If nominations are not made within the time and in the manner specified in § 965.27, the Secretary may, without regard to nominations, select the committee members and alternates, which selection shall be on the basis of the representation provided for in §§ 965.24 to 965.26, inclusive.

§ 965.29 Acceptance.

Any person selected as a committee member or alternate shall qualify by filing a written acceptance with the Secretary within ten days after being notified of such selection.

§ 965.30 Vacancies.

To fill committee vacancies, the Secretary may select such members or alternates from unselected nominees on the current nominee list from the district involved, or from nominations made in the manner specified in § 965.27. If the names of nominees to fill any such vacancy are not made available to the Secretary within 30 days after such vacancy occurs, such vacancy may be filled without regard to nominations, which selection shall be made on the basis of the representation provided for in §§ 965.24 to 965.26, inclusive.

§ 965.31 Alternate members.

An alternate member of the committee shall act in the place and stead of the member during such member's absence or when designated to do so. In the event both a member of the committee and that member's respective alternate are unable to attend a committee meeting, the member, alternate, or the committee, in that order, may designate another alternate from the same group (producer or handler) to serve in such member's stead. In the event of the death, removal, resignation, or disqualification of a member, the alternate shall act for the member until a successor for such member is selected and has qualified. The committee may request the attendance of alternates at any or all meetings, notwithstanding the expected or actual presence of the respective members.

[45 FR 82911, Dec. 17, 1980]

§ 965.32 Procedure.

(a) At assembled meetings six members of the committee shall constitute a quorum and six concurring votes shall be required to approve any committee action. Such votes shall be cast in person.

(b) The committee may meet by telephone, telegraph, or other means of communication. The agendas of such meetings shall be limited to nonregulatory provisions and any vote cast shall be promptly confirmed in writing. On such occasions seven concurring votes shall be required to approve any action.

[45 FR 82911, Dec. 17, 1980]

§ 965.33 Expenses and compensation.

Committee members and alternates may be reimbursed for expenses necessarily incurred by them in the per-

formance of duties and in the exercise of powers under this part.

§ 965.34 Powers.

The committee shall have the following powers:

(a) To administer the provisions of this part in accordance with its terms;

(b) To make rules and regulations to effectuate the terms and provisions of this part;

(c) To receive, investigate, and report to the Secretary complaints of violation of the provisions of this part; and

(d) To recommend to the Secretary amendments to this part.

§ 965.35 Duties.

It shall be, among other things, the duty of the committee:

(a) As soon as practicable after the beginning of each term of office, to meet and organize, to select a chairman and such other officers as may be necessary, to select subcommittees of committee members, or alternates and to adopt such rules and regulations for the conduct of its business as it may deem advisable;

(b) To act as intermediary between the Secretary and any producer or handler;

(c) To furnish to the Secretary such available information as he may request;

(d) To appoint such employees, agents, and representatives as it may deem necessary, to determine the salaries and define the duties of each such person, and to protect the handling of committees funds through fidelity bonds for employees;

(e) To investigate from time to time and to assemble data on the growing, harvesting, shipping, and marketing conditions with respect to tomatoes;

(f) To prepare a marketing policy;

(g) To recommend marketing regulations to the Secretary;

(h) To recommend rules and procedures for, and to make determinations in connection with, issuance of certificates of privilege or exemptions, or both;

(i) To investigate an applicant's claim for exemptions;

(j) To keep minutes, books, and records which clearly reflect all of the acts and transactions of the committee and such minutes, books and records shall be subject to examination at any time by the Secretary or by his authorized agent or representative. Minutes of each committee meeting shall be reported promptly to the Secretary;

(k) At the beginning of each fiscal period, to prepare a budget of its expenses for such fiscal period, together with a report thereon;

(l) To cause the books of the committee to be audited by a competent accountant at least once each fiscal period, and at such other time as the committee may deem necessary or as the Secretary may request. The report of such audit shall shown the receipt and expenditure of funds collected pursuant to this part. A copy of each such report shall be furnished to the Secretary and a copy of each such report shall be made available at the principal office of the committee for inspection by producers and handlers;

(m) To consult, cooperate, and exchange information with other marketing agreement committees and other individuals or agencies in connection with all proper committee activities and objectives under this part; and

(n) To recommend nominees for the public member and alternate.

[24 FR 2425, Mar. 28, 1959. Redesignated at 26 FR 12751, Dec. 30, 1961, and amended at 45 FR 82911, Dec. 17, 1980]

Expenses and Assessments

§ 965.40 Expenses.

The committee is authorized to incur such expenses as the Secretary may find are reasonable and likely to be incurred during each fiscal period for its maintenance and functioning, and for such purposes as the Secretary, pursuant to this subpart, determines to be appropriate. Handlers shall share expenses upon the basis of a fiscal period. Each handler's share of such expense shall be proportionate to the ratio between the total quantity of tomatoes under regulation handled by him as the first handler thereof during a fiscal period and the total quantity of tomatoes under regulation

handled by all handlers as first handlers thereof during such fiscal period.

§ 965.41 Budget.

As soon as practicable after the beginning of each fiscal period and as may be necessary thereafter, the committee shall prepare an estimated budget of income and expenditures necessary for the administration of this part. The committee may recommend a rate of assessment calculated to provide adequate funds to defray its proposed expenditures. The committee shall present such budget to the Secretary with an accompanying report showing the basis for its calculations.

§ 965.42 Assessments.

(a) The funds to cover the committee's expenses shall be acquired by the levying of assessments upon handlers as provided in this subpart. Each handler who first handles tomatoes, which are regulated under this part, shall pay assessments to the committee upon demand, which assessments shall be in payment of such handler's pro rata share of the committee's expenses. If a handler does not pay the assessment within the time prescribed by the committee, the assessment may be increased by a late payment charge or an interest charge, or both.

(b) Assessments, late payment charges and interest charges shall be levied upon handlers at rates established by the Secretary. Such rates may be established upon the basis of the committee's recommendations and other available information. Such rates may be applied to specified containers used in the production area.

(c) At any time during, or subsequent to, a given fiscal period the committee may recommend the approval of an amended budget and an increase in the rate of assessment. Upon the basis of such recommendations, or other available information, the Secretary may approve an amended budget and increase the rate of assessment. Such increase shall be applicable to all tomatoes which were regulated under this part and which were handled by the first handler thereof during such fiscal period.

(d) The payment of assessments for the maintenance and functioning of the committee may be required under this part throughout the period it is in effect irrespective of whether particular provisions thereof are suspended or become inoperative.

[24 FR 2425, Mar. 28, 1959. Redesignated at 26 FR 12751, Dec. 30, 1961, and amended at 45 FR 82911, Dec. 17, 1980]

§ 965.43 Accounting.

(a) If, at the end of a fiscal period, the assessments collected are in excess of expenses incurred, such excess shall be accounted for in accordance with one of the following:

(1) If such excess is not retained in a reserve, as provided in paragraph (a)(2) of this section, it shall be refunded proportionately to the persons from whom it was collected.

(2) The committee, with the approval of the Secretary, may carry over such excess into subsequent fiscal periods as a reserve: *Provided,* That funds already in the reserve do not exceed approximately two fiscal periods budgeted expenses. Such reserve funds may be used (i) to defray expenses, during any fiscal period, prior to the time assessment income is sufficient to cover such expenses, (ii) to cover deficits incurred during any fiscal period when assessment income is less than expenses, (iii) to defray expenses incurred during any period when any or all provisions of this part are suspended or are inoperative, (iv) to cover necessary expenses of liquidation in the event of termination of this part. Upon such termination, any funds not required to defray the necessary expenses of liquidation shall be disposed of in such manner as the Secretary may determine to be appropriate. To the extent practical, such funds shall be returned pro rata to the persons from whom such funds were collected.

(b) All funds received by the committee pursuant to the provisions of this part shall be used solely for the purpose specified in this part and shall be accounted for in the manner provided in this part. The Secretary may at any time require the committee and its members to account for all receipts and disbursements.

(c) Upon the removal or expiration of the term of office of any member of

the committee, such member shall account for all receipts and disbursements and deliver all property and funds in his possession to the committee, and shall execute such assignments and other instruments as may be necessary or appropriate to vest in the committee full title to all of the property, funds, and claims vested in such member pursuant to this part.

(d) The committee may make recommendations to the Secretary for one or more of the members thereof, or any other person, to act as a trustee for holding records, funds, or any other committee property during periods of suspension of this subpart, or during any period or periods when regulations are not in effect and if the Secretary determines such action appropriate, he may direct that such person or persons shall act as trustee or trustees for the committee.

[24 FR 2425, Mar. 28, 1959. Redesignated at 26 FR 12751, Dec. 30, 1961, and as amended at 45 FR 82911, Dec. 17, 1980]

§ 965.44 Contributions.

The committee may accept voluntary contributions but these shall only be used to pay expenses incurred pursuant to § 965.48. Furthermore, such contributions shall be free from any encumbrances by the donor and the committee shall retain complete control of their use.

[45 FR 82911, Dec. 17, 1980]

Research and Development

§ 965.48 Research and development.

The committee, with the approval of the Secretary, may establish or provide for the establishment of production research, marketing research and development projects, and marketing promotion including paid advertising designed to assist, improve, or promote the marketing, distribution, and consumption or efficient production of tomatoes. The expenses of such projects shall be paid from funds collected pursuant to § 965.42 or § 965.44.

[45 FR 82911, Dec. 17, 1980]

Regulation

§ 965.50 Marketing policy.

Prior to or at the same time as initial recommendations are made pursuant to § 965.51, the committee shall submit to the Secretary a report setting forth the marketing policy it deems desirable for the industry to follow in shipping tomatoes from the production area during the ensuing season. Additional reports shall be submitted from time to time if it is deemed advisable by the committee to adopt a new marketing policy because of changes in the demand and supply situation with respect to tomatoes. The committee shall publicly announce the submission of each such marketing policy report and copies thereof shall be available at the committee's office for inspection by any producer or any handler. In determining each such marketing policy the committee shall give due consideration to the following:

(a) Market prices of tomatoes, including prices by grades, sizes, and quality in different packs, and such prices by foreign competing areas;

(b) Supply of tomatoes, by grade, size, and quality in the production area, and in other production areas, including foreign competing production areas;

(c) Trend and level of consumer income;

(d) Marketing conditions affecting tomato prices; and

(e) Other relevant factors.

§ 965.51 Recommendations for regulations.

The committee, upon complying with the requirements of § 965.50, may recommend regulations to the Secretary whenever it finds that such regulations as are provided for in this subpart will tend to effectuate the declared policy of the act.

§ 965.52 Issuance of regulations.

(a) The Secretary shall limit by regulation the handling of tomatoes whenever he finds from the recommendations and information submitted by the committee, or from other available information, that such regu-

lation would tend to effectuate the declared policy of the act.

(b) Such regulation may:

(1) Limit, in any or all portions of the production area, the handling of particular grades, sizes, qualities, or packs of any or all varieties of tomatoes during any period; or

(2) Limit the handling of particular grades, sizes, qualities, or packs of tomatoes differently, for different varieties, for different stages of maturity, for different portions of the production area, for different containers, for different purposes specified in § 965.54, or any combination of the foregoing, during any period; or

(3) Limit the shipment of tomatoes by establishing, in terms of grades, sizes, or both, minimum standards of quality and maturity; or

(4) Fix the size, weight, capacity, dimensions, or pack of the container or containers which may be used in the packaging, transportation, sale, shipment, or other handling of tomatoes.

§ 965.53 Minimum quantities.

The committee, with the approval of the Secretary, may establish, for any or all portions of the production area, minimum quantities below which handling will be free from regulations issued or effective pursuant to § 965.42, § 965.52, § 965.54, or § 965.60, or any combination thereof.

§ 965.54 Handling for special purposes.

Upon the basis of recommendations and information submitted by the committee, or other available information, the Secretary, whenever he finds that it will tend to effectuate the declared policy of the act, shall modify, suspend, or terminate regulations issued pursuant to § 965.42, § 965.52, § 965.53, or § 965.60, or any combination thereof, in order to facilitate shipments of tomatoes for the following purposes:

(a) For export;

(b) For relief or for charity;

(c) For processing;

(d) For experimental projects; or

(e) For other purposes which may be specified.

§ 965.55 Notification of regulation.

The Secretary shall notify the committee of any regulations issued or of any modification, suspension, or termination thereof. The committee shall give reasonable notice thereof to handlers.

§ 965.56 Safeguards.

(a) The committee, with the approval of the Secretary, may prescribe adequate safeguards to prevent tomatoes handled pursuant to § 965.53 or § 965.54 from entering channels of trade for other than the specific purpose authorized therefor, and rules governing the issuance and the contents of Certificates of Privilege, if such certificates are prescribed as safeguards by the committee. Such safeguards may include requirements that:

(1) Handlers shall file applications with the committee to handle tomatoes pursuant to §§ 965.53 and 965.54; or

(2) Handlers shall obtain inspection provided by § 965.60, or pay the assessment levied pursuant to § 965.42, or both, in connection with shipments made under § 965.54.

(3) Handlers shall obtain Certificates of Privilege from the committee for handling of tomatoes affected or to be affected under the provisions of §§ 965.53 and 965.54.

(b) The committee may rescind or deny Certificates of Privilege to any handler if proof is obtained that tomatoes handled by him for the purposes stated in §§ 965.53 and 965.54 were handled contrary to the provisions of this part.

(c) The committee shall make reports to the Secretary, as requested, showing the number of applications for such certificates, the quantity of tomatoes covered by such applications, the number of such applications denied and certificates granted, the quantity of tomatoes handled under duly issued certificates, and such other information as may be requested.

INSPECTION

§ 965.60 Inspection and certification.

(a) During any period in which handling of tomatoes is regulated pursuant to this subpart no handler shall handle tomatoes unless such tomatoes have been inspected by an authorized representative of the Federal Inspection Service, or such other inspection service as the Secretary shall designate, and are covered by a valid inspection certificate, except when relieved from such requirements pursuant to § 965.53, or § 965.54, or both. Handlers may be required, upon recommendation of the committee and approval of the Secretary, to mark or indicate on the containers that the tomatoes therein have been inspected.

(b) Regrading, resorting, or repacking any lot of tomatoes shall invalidate any prior inspection certificates insofar as the requirements of this section are concerned. No handler shall handle tomatoes after they have been regraded, resorted, repacked, or in any other way further prepared for market, unless each lot of such tomatoes is inspected by an authorized representative of the Federal Inspection Service, or such other inspection service as the Secretary shall designate: *Provided,* That the committee, with approval of the Secretary, may provide for waiving inspection requirements on any tomatoes in circumstances where it appears reasonably certain that, after regarding, resorting, or repacking, such tomatoes meet the applicable quality and other standards then in effect.

(c) Insofar as the requirements of this section are concerned, the length of time for which an inspection certificate is valid may be established by the committee with the approval of the Secretary.

(d) When tomatoes are inspected in accordance with the requirements of this section, a copy of each inspection certificate issued shall be made available to the committee by the inspection service.

(e) The committee may recommend and the Secretary may require that no handler shall transport or cause the transportation of tomatoes by motor vehicle or by other means unless shipment is accompanied by a copy of the inspection certificate issued thereon, or such other documents as may be required by the committee. Such certificates or documents shall be surrendered to proper authorities at such times and in such manner as may be designated by the committee, with the approval of the Secretary.

[24 FR 2425, Mar. 28, 1959. Redesignated at 26 FR 1275, Dec. 30, 1961, and amended at 45 FR 82911, Dec. 17, 1980]

EXEMPTIONS

§ 965.70 Procedure.

The committee may adopt, with approval of the Secretary, the procedures pursuant to which certificates of exemption will be issued to producers or handlers.

§ 965.71 Granting exemptions.

The committee shall issue certificates of exemption to any producer who applies for such exemption and furnishes adequate evidence to the committee, that by reason of a regulation issued pursuant to § 965.52 he will be prevented from handling as large a proportion of his production as the average proportion of production handled during the entire season, or such portion thereof as may be determined by the committee, by all producers in said applicant's immediate production area and that the grade, size, or quality of the applicant's tomatoes have been adversely affected by acts beyond the applicant's control and beyond reasonable expectation. Each certificate shall permit the producer to handle the amount of tomatoes specified thereon. Such certificate shall be transferred with such tomatoes at time of transportation or sale.

§ 965.72 Investigation.

The committee shall be permitted at any time to make a thorough investigation of any producer's claim pertaining to exemptions.

§ 965.73 Appeal.

If any applicant for exemption certificates is dissatisfied with the determination by the committee with respect to his application, said applicant

may file an appeal with the committee. Such an appeal must be taken promptly after the determination by the committee from which the appeal is taken. Any applicant filing an appeal shall furnish evidence satisfactory to the committee for a determination on the appeal. The committee shall thereupon reconsider the application, examine all available evidence, and make a final determination concerning the application. The committee shall notify the appellant of the final determination, and shall furnish the Secretary with a copy of the appeal and a statement of considerations involved in making the final determination.

§ 965.74 Records.

(a) The committee shall maintain a record of all applications submitted for exemption certificates, a record of all exemption certificates issued and denied, the quantity of tomatoes covered by such exemption certificates, a record of appeals for reconsideration of applications, and such other information as may be requested by the Secretary. Periodic reports on such records shall be compiled and issued by the committee upon request of the Secretary.

(b) The Secretary shall have the right to modify, change, alter, or rescind any procedure and any exemptions granted pursuant to § 965.70, § 965.71, § 965.72, or § 965.73, or any combination thereof.

Reports

§ 965.80 Reports.

Upon the request of the committee, made with approval of the Secretary, each handler shall furnish to the committee in such manner and at such time as it may prescribe, reports and other information as may be necessary for the committee to perform its duties under this part. In this connection:

(a) Such reports may include, but are not necessarily limited to, the following: (1) The quantities of tomatoes received by a handler; (2) the quantities disposed of by him, segregated as to the respective quantities subject to regulation, and not subject to regulation; (3) the date of each such disposition and the identification of the carrier transporting such tomatoes; and (4) identification of the inspection certificates and the exemption certificates, if any, pursuant to which the tomatoes were handled, together with the destination of each exempted disposition and of all tomatoes handled pursuant to §§ 965.53 and 965.54.

(b) All such reports shall be held under appropriate protective classification and custody by the committee, or duly appointed employees thereof, so that the information contained therein which may adversely affect the competitive position of any handler in relation to other handlers will not be disclosed. Compilations of general reports from data submitted by handlers is authorized, subject to prohibition of disclosure of individual handlers' identities or operations.

(c) Each handler shall maintain for at least two succeeding years such records of the tomatoes received and disposed of by such handler as may be necessary to verify the reports he submits to the committee pursuant to this section.

Compliance

§ 965.81 Compliance.

Except as provided in this part, no handler shall handle tomatoes, the handling of which has been prohibited by the Secretary in accordance with provisions of this part, or the rules and regulations thereunder, and no handler shall handle tomatoes except in conformity to the provisions of this part.

Miscellaneous Provisions

§ 965.82 Right of the Secretary.

The members of the committee (including successors and alternates), and any agent or employee appointed or employed by the committee, shall be subject to removal or suspension by the Secretary at any time. Each and every order, regulation, decision, determination or other act of the committee shall be subject to the continuing right of the Secretary to disapprove of the same at any time. Upon such disapproval, the disapproved

action of the said committee shall be deemed null and void, except as to acts done in reliance thereon or in compliance therewith prior to such disapproval by the Secretary.

§ 965.83 Effective time.

The provisions of this subpart, or any amendment thereto, shall become effective at such time as the Secretary may declare and shall continue in force until terminated in one of the ways specified in this subpart.

§ 965.84 Termination.

(a) The Secretary may, at any time, terminate the provisions of this subpart by giving at least one day's notice by means of a press release or in any other manner which he may determine.

(b) The Secretary may terminate or suspend the operation of any or all of the provisions of this subpart whenever he finds that such provisions do not tend to effectuate the declared policy of the act.

(c) The Secretary shall terminate the provisions of this subpart at the end of any fiscal period whenever he finds that such termination is favored by a majority of producers, who during a representative period, have been engaged in the production of tomatoes for market: *Provided*, That such majority has, during such representative period, produced for market more than fifty percent of the volume of such tomatoes produced for market.

(d) The provisions of this subpart shall, in any event, terminate whenever the provisions of the act authorizing them cease to be in effect.

§ 965.85 Proceedings after termination.

(a) Upon the termination of the provisions of this subpart the then functioning members of the committee shall continue as joint trustees for the purpose of liquidating the affairs of the committee of all the funds and property then in the possession of or under control of the committee, including claims for any funds unpaid or property not delivered at the time of such termination. Action by said trusteeship shall require the concurrence of a majority of the said trustees.

(b) The said trustees shall continue in such capacity until discharged by the Secretary; shall, from time to time, account for all receipts and disbursements and deliver all property on hand, together with all books and records of the committee and of the trustees, to such person as the Secretary may direct; and shall, upon request of the Secretary, execute such assignments or other instruments necessary or appropriate to vest in such persons full title and right to all of the funds, property, and claims vested in the committee or the trustees pursuant to this subpart.

(c) Any person to whom funds, property, or claims have been transferred or delivered by the committee or its members, pursuant to this section, shall be subject to the same obligations imposed upon the members of the committee and upon the said trustees.

§ 965.86 Effect of termination or amendment.

Unless otherwise expressly provided by the Secretary, the termination of this subpart or of any regulation issued pursuant to this subpart, or the issuance of any amendments to either thereof, shall not (a) affect or waive any right, duty, obligation, or liability which shall have arisen or which may thereafter arise in connection with any provisions of this subpart or any regulation issued under this subpart, or (b) release or extinguish any violation of this subpart, or of any regulations issued under this subpart, or (c) affect or impair any rights or remedies of the Secretary or of any other person with respect to any such violations.

§ 965.87 Duration of immunities.

The benefits, privileges, and immunities conferred upon any person by virtue of this subpart shall cease upon the termination of this subpart, except with respect to acts done under and during the existence of this subpart.

§ 965.88 Agents.

The Secretary may, by designation in writing, name any person, including

any officer or employee of the United States Department of Agriculture, to act as his agent or representative in connection with any of the provisions of this subpart.

§ 965.89 Derogation.

Nothing contained in this subpart is, or shall be construed to be, in derogation or in modification of the rights of the Secretary or of the United States to exercise any powers granted by the act or otherwise, or, in accordance with such powers, to act in the premises whenever such action is deemed advisable.

§ 965.90 Personal liability.

No member or alternate of the committee nor any employee or agent thereof, shall be held personally responsible, either individually or jointly with others, in any way whatsoever, to any handler or to any person for errors in judgment, mistakes, or other acts, either of commission or omission, as such member, alternate, agent, or employee, except for acts of dishonesty, willful misconduct, or gross negligence.

§ 965.91 Separability.

If any provision of this subpart is declared invalid, or the applicability thereof to any person, circumstance, or thing is held invalid, the validity of the remainder of this subpart, or the applicability thereof to any other person, circumstance, or thing, shall not be affected thereby.

§ 965.92 Amendments.

Amendments to this subpart may be proposed, from time to time, by the committee or by the Secretary.

Subpart—Rules and Regulations

SOURCE: 24 FR 4132, May 22 1959, unless otherwise noted. Redesignated at 26 FR 12751, Dec. 30, 1961.

GENERAL

§ 965.100 Communications.

Unless otherwise provided in this part, or by specific direction of the committee, all reports, applications, submittals, requests, and communications in connection with the marketing order shall be addressed to the Texas Valley Tomato Committee at its principal office.

DEFINITIONS

§ 965.110 Order.

"Order" means Marketing Order No. 965 (§§ 965.1 to 965.92) regulating the handling of tomatoes grown in the counties of Cameron, Hidalgo, Starr, and Willacy in Texas (Lower Rio Grande Valley).

§ 965.111 Terms.

Terms used in this subpart shall have the same meaning as when used in this part.

§ 965.112 Registered handler.

(a) For purposes of this part, any person who operates an established tomato packing house within the production area, with facilities for grading and packing tomatoes for market, and who customarily buys tomatoes from producers for grading, packing, and marketing, may be listed by the committee as a registered handler; (b) any other person who desires to be listed as a registered handler may make application for registration on forms furnished by the committee. If the applicant has facilities available to him that are determined by the committee to be adequate for grading and packing tomatoes for market and he assumes responsibility for inspection of tomatoes handled by him, and for assessments thereon, he shall be listed by the committee as a registered handler; (c) if it is determined from the available information that the applicant is not entitled to be registered with the committee, he shall be so informed by written notice stating the reason for denial of his application; (d) any registration of a handler pursuant to this section may be canceled by the committee under circumstances which would have justified denial of this application. Any handler whose registration has been canceled shall be so informed by written notice thereof stating the reason therefor. The committee shall also notify producers of each such cancellation of handler registra-

tion through committee bulletins or published notice in local newspapers of general distribution, or both.

§ 965.113 Registered repacker.

For purposes of this part, any handler may qualify as a registered repacker by furnishing evidence to the committee that his repacking plant (a) is located within the production area; (b) is equipped with ripening rooms, including mechanical equipment for properly maturing tomatoes; and (c) is regularly engaged in repacking tomatoes for market. If the applicant meets the foregoing qualifications and agrees to provide from time to time, as requested by the committee, evidence, either in the form of reports or upon inspection by committee representatives, that tomatoes grown in the production area and repacked by him were repacked from tomatoes which had previously been inspected and certified as meeting regulations issued under § 965.52, he shall be listed by the committee as a registered repacker.

§ 965.114 Fiscal period.

The fiscal period which extends from March 1, 1963, through February 29, 1964 (28 FR 6732), shall end July 31, 1963. Beginning August 1, 1963, and thereafter, the fiscal period shall begin August 1 of each year and end July 31 of the following year, both dates inclusive.

[28 FR 13769, Dec. 18, 1963]

SAFEGUARDS

§ 965.120 Policy.

Whenever shipments of tomatoes for special purposes pursuant to § 965.54 are relieved in whole or in part from grade and size regulations issued under § 965.52 the committee may require information and evidence as to the manner, methods, and timing of such shipments as safeguards against the entry of any such tomatoes into trade channels other than those for which intended. Such information and evidence may include the requirements set forth below with respect to Certificates of Privilege.

§ 965.121 Qualification.

Before handling tomatoes for special purposes which do not meet regulations issued pursuant to § 965.52, a handler must qualify with the committee to handle shipments for special purposes. To qualify he must (a) apply for and receive a Certificate of Privilege indicating his intent to so handle tomatoes; (b) agree to comply with reporting and other requirements set forth in §§ 965.121 to 965.125, inclusive, with respect to such shipments; and (c) receive approval of the committee, or its duly authorized agents, to so handle tomatoes. Such approval will be based upon evidence furnished in his application for a Certificate of Privilege, and other information available to the committee.

§ 965.122 Application.

Applications for Certificates of Privilege shall be made on forms furnished by the committee. Each application may contain, but need not be limited to, the name and address of the handler; the quantity by grade; size, quality and variety of the tomatoes to be shipped; the mode of transportation; the consignee; the destination; the purpose for which the tomatoes are to be used; and any other appropriate information or documents deemed necessary by the committee or its duly authorized agents for the purposes stated in § 965.120.

§ 965.123 Approval.

The committee or its duly authorized agents shall give prompt consideration to each application for a Certificate of Privilege. Approval of an application, based upon a determination as to whether the information contained therein supports approval shall be evidenced by the issuance of a Certificate of Privilege to the applicant named therein for a specified period of time during which, upon the basis of the committee action, the applicant may ship a specified quality and quantity of tomatoes to the designated receiver for the purpose declared.

§ 965.124 Reports.

Each handler handling Certificates of Privilege shipments of tomatoes

shall supply the committee with reports as requested by the committee or its duly authorized agents showing the name and address of the shipper; the car or truck identification; the loading point; destination; consignee; the inspection certificate number when inspection is required; and any other information deemed necessary by the committee.

§ 965.125 Disqualification.

The committee from time to time may conduct surveys of handling of tomatoes under Certificates of Privilege to determine whether handlers are complying with the requirements of this subpart. Whenever the committee finds that a handler is failing to comply with requirements set forth in the regulations applicable to special shipments and in the aforesaid sections, his Certificate or Certificates of Privilege shall be rescinded or denied. Such disqualification shall apply to, and not exceed, a reasonable period of time as determined by the committee. Any handler who has a certificate rescinded or denied may appeal to the committee in writing for reconsideration of his disqualification.

EXEMPTION PROCEDURES

§ 965.130 Application.

Any person applying for exemption from regulations issued pursuant to § 965.52 shall file such application with the committee, or its duly authorized agent for such purpose, on forms furnished by the committee. Each application shall state the name and address of the applicant, the grade, size, and quality regulations from which exemption is requested; and facts demonstrating that the tomatoes, for which exemption is requested, were adversely affected by acts beyond his control or by acts beyond the applicant's reasonable expectation. Applications shall set forth such additional information as the committee may find necessary in making determinations with respect thereto, including the information required on producers' applications by paragraphs (a) and (b) of this section.

(a) The location and tomato acreage of the farm on which the tomatoes for which exemption is requested were grown, the location where such tomatoes are to be prepared for market, and the loading point from which such tomatoes are to be shipped if exemption is granted;

(b) Quantity (by grade, size, quality, and maturity) of tomatoes harvested from such acreage prior to date of application, and to be harvested subsequent to such date, during the remainder of the season or specific portion thereof (as may be determined pursuant to this part); an estimate of the portion of such tomatoes which can be handled under regulations issued pursuant to § 965.52, during the remainder of the season; and the reason why the tomatoes which cannot be handled under such regulations do not meet the requirements of such regulations.

§ 965.131 Investigations.

The committee may authorize investigations of applications by its employees, and such other persons as may be necessary to procure adequate information to pass upon the merits of such applications.

§ 965.132 Issuance.

(a) The committee, or its duly authorized agents, shall give prompt consideration to all statements and facts relating to each application for exemption, and, pursuant to applicable provisions of this part, a determination shall be made as to whether or not the application is approved. The determination, if approving the application, shall be evidenced by the issuance of a certificate of exemption pursuant to § 965.71: *Provided,* That a separate certificate may be issued, at the request of an applicant, for each affected field.

(b) The applicant shall be notified in writing if his request for exemption is denied.

(c) Each exemption certificate issued pursuant to this subpart shall be on a form duly approved by the committee and signed by an authorized representative of such committee. At least one copy of each exemption certificate issued shall be retained in the committee records. Each such certificate shall contain the name and address of the

recipient, the location of all tomatoes authorized to be shipped thereunder, the quantity (by grade, size, quality and maturity) of tomatoes which will be permitted in the exempted shipments and such other information as may be deemed necessary by the committee to provide such committee, the recipient, or both, with adequate and specific information regarding such exempted tomatoes.

§ 965.133 Disposition of certificates.

(a) Each lot of tomatoes handled under an exemption certificate shall be accompanied by such certificate, or such appropriate identifying information with respect to such certificate as the committee may require, to facilitate the administration of regulatory provisions applicable thereto.

(b) Each shipment of a lot, or portion thereof, of tomatoes covered by an exemption certificate shall be accompanied by a Federal Inspection Certificate which shall show the exemption certificate number covering the lot.

§ 965.134 Reports.

Persons handling tomatoes under exemption certificates shall, at such time as may be specified in such certificates, report thereon to the committee the names and addresses of the receivers of such tomatoes, the quantity shipped (by grade, size, quality and maturity), the inspection certificates issued with respect thereto, the dates of such shipments, and such other information as may be requested by such committee in order to administer the regulatory provisions applicable thereto.

§ 965.135 Appeals.

If any applicant is dissatisfied with the determination of the committee regarding an application for an exemption certificate, or any duly issued exemption certificate, an appeal by such applicant may be taken to such committee in accordance with § 965.73.

§ 965.150 Reestablishment of districts.

Effective August 1, 1979, districts within the production area are reestablished, pursuant to § 965.25 *Redistricting*, as follows: District No. 1, the County of Cameron, and District No. 4, the County of Willacy, and their respective membership are combined to form a new District No. 1; and District No. 2, the County of Hidalgo, and District No. 3, the County of Starr, and their respective membership are combined to form a new District No. 2.

[43 FR 47486, Oct. 16, 1978]

§ 965.151 Selection.

Effective August 1, 1979, the Secretary shall select four members and their respective alternates to represent District No. 1, and five members and their respective alternates to represent District No. 2.

[43 FR 47486, Oct. 16, 1978]

NOTE: After January 1, 1979, "Budget of Expenses and Rate of Assessment" regulations (e.g., sections .200 through .299) and "Handling" regulations (e.g., sections .300 through .399) which are in effect for a year or less, will not be carried in the Code of Federal Regulations. For FEDERAL REGISTER citations affecting these regulations, see the "List of CFR Sections Affected" in this volume.

PART 966—TOMATOES GROWN IN FLORIDA

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966.161 Reapportionment of Committee Membership.

AUTHORITY: Sec. 5, 49 Stat. 753, as amended; 7 U.S.C. 608c, unless otherwise noted.

Subpart—Order Regulating Handling

SOURCE: 20 FR 7357, Oct. 4, 1955, unless otherwise noted. Redesignated at 26 FR 12751, Dec. 30, 1961.

DEFINITIONS

§ 966.1 Secretary.

"Secretary" means the Secretary of Agriculture of the United States, or any officer or employee of the Department to whom authority has heretofore been delegated, or to whom authority may hereafter be delegated, to act in his stead.

§ 966.2 Act.

"Act" means Public Act No. 10, 73d Congress, as amended and as reenacted and amended by the Agricultural

Marketing Agreement Act of 1937, as amended (48 Stat. 31, as amended; 7 U.S.C. 601 et seq.; 68 Stat. 906, 1047).

§ 966.3 Person.

"Person" means an individual, partnership, corporation, association, or any other business unit.

§ 966.4 Production area and regulated area.

(a) "Production area" means the counties of Pinellas, Hillsborough, Polk, Osceola, and Brevard in the State of Florida, and all the counties of that State situated south of such counties.

(b) "Regulated area" means that portion of the State of Florida which is bounded by the Suwannee River, the Georgia border, the Atlantic Ocean, and the Gulf of Mexico.

[33 FR 8585, June 12, 1968, as amended at 34 FR 19186, Dec. 4, 1969]

§ 966.5 Tomatoes.

"Tomatoes" means all varieties of the edible fruit (Lycopersicon esculentum) commonly known as tomatoes and grown within the production area.

§ 966.6 Handler.

"Handler" is synonymous with "shipper" and means any person (except a common or contract carrier transporting tomatoes for another person) who, as owner, agent, or otherwise, handles fresh tomatoes or causes fresh tomatoes to be handled.

[33 FR 8585, June 12, 1968]

§ 966.7 Handle.

"Handle" or "ship" means to sell, transport, deliver, or in any other way to place fresh tomatoes, produced in the production area, in the current of commerce within the regulated area or between any point in the regulated area and any point outside thereof. Such term shall not include the transportation, sale or delivery of field-run tomatoes within the production area by the producer thereof to a registered handler for the purpose of having such tomatoes prepared for market. A registered handler is a handler who has adequate facilities in the production area for grading and packing tomatoes and who is registered with the committee pursuant to rules established with the approval of the Secretary.

[34 FR 19186, Dec. 4, 1969]

§ 966.8 Producer.

"Producer" means any person engaged in a proprietary capacity in the production of tomatoes for market.

§ 966.9 Grading.

"Grading" is synonymous with "preparation for market" and means the sorting or separation of tomatoes into grades, sizes, maturities, and packs for market purposes.

§ 966.10 Grade and size.

"Grade" means any one of the established grades of tomatoes and "size" means any one of the established sizes of tomatoes as defined and set forth in U.S. Standards for Fresh Tomatoes (§§ 51.1855 to 51.1877 of this title or U.S. Consumer Standards for Fresh Tomatoes (§§ 51.1900 to 51.1913 of this title), both issued by the United States Department of Agriculture, or amendments thereto, or modifications thereof, or variations based thereon recommended by the committee and approved by the Secretary.

§ 966.11 Pack.

"Pack" means any of the packs of tomatoes as defined and set forth in the United States Standards for Fresh Tomatoes issued by the United States Department of Agriculture (§§ 51.1855 to 51.1877 of this title), or any pack of tomatoes recommended by the committee and approved by the Secretary.

§ 966.12 Maturity.

"Maturity" means any of the various degrees of ripeness of tomatoes as established by the committee with approval of the Secretary as determined at the time of the inspection, pursuant to § 966.60(a).

[34 FR 19186, Dec. 4, 1969]

§ 966.13 Container.

"Container" means a box, bag, crate, hamper, basket, package, tube, bulk load or any other type of unit used in

the packaging, transportation, sale, shipment, or handling of tomatoes.

§ 966.14 Varieties.

"Varieties" means and includes all classifications or subdivisions of tomatoes according to those definitive characteristics now or hereafter recognized by the United States Department of Agriculture.

§ 966.15 Committee.

"Committee" means the Florida Tomato Committee, established pursuant to § 966.22.

§ 966.16 Fiscal period.

"Fiscal period" means the period beginning August 1 and ending July 31 following.

§ 966.17 District.

"District" means each one of the geographic divisions of the production area initially established pursuant to § 966.24, or as reestablished pursuant to § 966.25.

§ 966.18 Export.

"Export" means shipment of tomatoes beyond the boundaries of the 48 contiguous States (including the District of Columbia) of the United States.

[34 FR 19186, Dec. 4, 1969]

COMMITTEE

§ 966.22 Establishment and membership.

(a) The Florida Tomato Committee, consisting of 12 producer members, is hereby established. For each member of the committee there shall be an alternate who shall have the same qualifications as the member.

(b) Each person selected as a committee member or alternate shall be an individual who is a producer, or an officer or an employee of a corporate producer, in the district for which selected and a resident of the production area.

[33 FR 8586, June 12, 1968]

§ 966.23 Term of office.

(a) The term of office of committee members, and their respective alternates, shall be for 1 year and shall begin as of August 1 and end as of July 31.

(b) Committee members and alternates shall serve during the term of office for which they are selected and have qualified, or during that portion thereof beginning on the date on which they qualify during such term of office and continuing until the end thereof, and until their successors are selected and have qualified.

§ 966.24 Districts.

For the purpose of determining the basis for selecting committee members the following districts of the production area are hereby initially established.

District No. 1. The counties of Broward and Dade in the State of Florida;

District No. 2. The counties of Brevard, Glades, Indian River, Martin, Osceola, Okeechobee, Palm Beach, and St. Lucie in the State of Florida;

District No. 3. The counties of Charlotte, Collier, Hendry, Lee, and Monroe in the State of Florida; and

District No. 4. The counties of De Soto, Hardee, Highlands, Hillsborough, Manatee, Pinellas, Polk, and Sarasota in the State of Florida.

[33 FR 8586, June 12, 1968]

§ 966.25 Redistricting.

The committee may recommend, and pursuant thereto, the Secretary may approve, the reapportionment of members among districts, and the reestablishment of districts within the production area. In recommending any such changes, the committee shall give consideration to: (a) Shifts in tomato acreage within districts and within the production area during recent years; (b) the importance of new production in its relation to existing districts; (c) the equitable relationship of committee membership and districts; (d) economies to result for producers in promoting efficient administration due to redistricting or reapportionment of members within districts; and (e) other relevant factors. No change in districting or in apportionment of members within districts may become effective within less than 30 days prior to the date on which terms of office begin each year and no recommendations for such redistricting or reappor-

tionment may be made less than six months prior to such date.

§ 966.26 Selection.

The Secretary shall select initially 3 members of the committee with their respective alternates, from each district.

§ 966.27 Nomination.

The Secretary may select the members of the committee and alternates from nominations which may be made in the following manner:

(a) A meeting or meetings of producers shall be held in each district to nominate members and alternates for the committee. The committee shall hold such meetings or cause them to be held prior to June 15 of each year or by such other date as may be approved by the Secretary pursuant to recommendation of the committee.

(b) At each such meeting at least one nominee shall be designated for each position as member and for each position as alternate on the committee.

(c) Nominations for committee members and alternates shall be supplied to the Secretary in such manner and form as he may prescribe, not later than July 15 of each year, or by such other date as may be approved by the Secretary pursuant to recommendation of the committee.

(d) Only producers may participate in designating nominees for members and alternates on the committee. In the event a person is engaged in producing tomatoes in more than one district, such person shall elect the district within which he may participate as aforesaid in designating nominees; and

(e) Regardless of the number of districts in which a person produces tomatoes, each such person is entitled to cast only one vote on behalf of himself, his agents, subsidiaries, affiliates, and representatives in designating nominees for committee members and alternates. An eligible voter's privilege of casting only one vote as aforesaid shall be construed to permit a voter to cast one vote for each position to be filled in the respective district in which he elects to vote.

[20 FR 7357, Oct. 4, 1955. Redesignated at 26 FR 12751, Dec. 30, 1961, and amended at 33 FR 8586, June 12, 1968]

§ 966.28 Failure to nominate.

If nominations are not made within the time and in the manner specified in § 966.27, the Secretary may, without regard to nominations, select the committee members and alternates, which selection shall be on the basis of the representation provided for in §§ 966.24 through 966.26 inclusive.

§ 966.29 Acceptance.

Any person selected as a committee member or alternate shall qualify by filing a written acceptance with the Secretary within ten days after being notified of such selection.

§ 966.30 Vacancies.

To fill committee vacancies, the Secretary may select such members or alternates from unselected nominees on the current nominee list from the district involved, or from nominations made in the manner specified in § 966.27. If the names of nominees to fill any such vacancy are not made available to the Secretary within 30 days after such vacancy occurs, such vacancy may be filled without regard to nominations, which selection shall be made on the basis of the representation provided for in §§ 966.24 through 966.26 inclusive.

§ 966.31 Alternate members.

An alternate member of the committee shall act in the place and stead of the member for whom he is an alternate, during such member's absence. In the event of the death, removal, resignation, or disqualification of a member, his alternate shall act for him until a successor of such member is selected and has qualified.

§ 966.32 Procedure.

(a) Eight members of the committee shall be necessary to constitute a quorum and the same number of concurring votes shall be required to pass any motion or approve any committee action.

(b) The committee may provide for meeting by telephone, telegraph, or

other means of communication, and any vote cast at such a meeting shall be promptly confirmed in writing: *Provided*, That if any assembled meeting is held, all votes shall be cast in person.

[20 FR 7357, Oct. 4, 1955. Redesignated at 26 FR 12751, Dec. 30, 1961, and amended at 33 FR 8586, June 12, 1968]

§ 966.33 Expenses and compensation.

Committee members and alternates may be reimbursed for expenses necessarily incurred by them in the performance of duties and in the exercise of powers under this part.

§ 966.34 Powers.

The committee shall have the following powers:

(a) To administer the provisions of this part in accordance with its terms;

(b) To make rules and regulations to effectuate the terms and provisions of this part;

(c) To receive, investigate, and report to the Secretary complaints of violation of the provisions of this part; and

(d) To recommend to the Secretary amendments to this part.

§ 966.35 Duties.

It shall be, among other things, the duty of the committee:

(a) At the beginning of each term of office, to meet and organize, to select a chairman and such other officers as may be necessary, to select subcommittees of committee members, and to adopt such rules and regulations for the conduct of its business as it may deem advisable;

(b) To act as intermediary between the Secretary and any producer or handler;

(c) To furnish to the Secretary such available information as he may request;

(d) To appoint such employees, agents, and representatives as it may deem necessary and to determine the salaries and define the duties of each such person;

(e) To investigate from time to time and to assemble data on the growing, harvesting, shipping, and marketing conditions with respect to tomatoes;

(f) To prepare a marketing policy;

(g) To recommend marketing regulations to the Secretary;

(h) To recommend rules and procedures for, and to make determinations in connection with, issuance of certificates of privilege or exemptions, or both;

(i) To investigate an applicant's claim for exemptions;

(j) To keep minutes, books, and records which clearly reflect all of the acts and transactions of the committee and such minutes, books and records shall be subject to examination at any time by the Secretary or his authorized agent or representative. Minutes of each committee meeting shall be reported promptly to the Secretary;

(k) At the beginning of each fiscal period, to prepare a budget of its expenses for such fiscal period, together with a report thereon;

(l) To cause the books of the committee to be audited by a competent accountant at least once each fiscal period, and at such other time as the committee may deem necessary or as the Secretary may request. The report of such audit shall show the receipt and expenditure of funds collected pursuant to this part; a copy of each such report shall be furnished to the Secretary and a copy of each such report shall be made available at the principal office of the committee for inspection by producers and handlers; and

(m) To consult, cooperate, and exchange information with other marketing agreement committees and other individuals or agencies in connection with all proper committee activities and objectives under this part.

Expenses and Assessments

§ 966.40 Expenses.

The committee is authorized to incur such expenses as the Secretary may find are reasonable and likely to be incurred during each fiscal period for its maintenance and functioning, and for such purposes as the Secretary, pursuant to this subpart, determines to be appropriate. Handlers shall share expenses upon the basis of a fiscal period. Each handler's share of such expense shall be proportionate to the ratio between the total quantity of

tomatoes handled by him as the first handler thereof during a fiscal period and the total quantity of tomatoes handled by all handlers as first handlers thereof during such fiscal period.

§ 966.41 Budget.

At the beginning of each fiscal period and as may be necessary thereafter, the committee shall prepare an estimated budget of income and expenditures necessary for the administration of this part. The committee may recommend a rate of assessment calculated to provide adequate funds to defray its proposed expenditures. The committee shall present such budget to the Secretary with an accompanying report showing the basis for its calculations.

§ 966.42 Assessments.

(a) The funds to cover the committee's expenses shall be acquired by the levying of assessments upon handlers as provided in this subpart. Each handler who first handles tomatoes shall pay assessments to the committee upon demand, which assessments shall be in payment of such handler's pro rata share of the committee's expenses.

(b) Assessments shall be levied upon handlers at rates established by the Secretary. Such rates may be established upon the basis of the committee's recommendations and other available information. Such rates may be applied to specified containers used in the production area.

(c) At any time during, or subsequent to, a given fiscal period the committee may recommend the approval of an amended budget and an increase in the rate of assessment. Upon the basis of such recommendations, or other available information, the Secretary may approve an amended budget and increase the rate of assessment. Such increase shall be applicable to all tomatoes which were regulated under this part and which were shipped by the first handler thereof during such fiscal period.

(d) The payment of assessments for the maintenance and functioning of the committee may be required under this part throughout the period it is in effect irrespective whether particular provisions thereof are suspended or become inoperative.

§ 966.43 Accounting.

(a) All funds received by the committee pursuant to the provisions of this subpart shall be used solely for the purposes specified in this part.

(b) The Secretary may at any time require the committee, its members and alternates, employees, agents and all other persons to account for all receipts and disbursements, funds, property, or records for which they are responsible. Whenever any person ceases to be a member of the committee or alternate, he shall account to his successor, the committee, or to the person designated by the Secretary, for all receipts, disbursements, funds and property (including but not being limited to books and other records) pertaining to the committee's activities for which he is responsible, and shall execute such assignments and other instruments as may be necessary or appropriate to vest in such successor, committee, or designated person, the right to all of such property and funds and all claims vested in such person.

(c) The committee may make recommendations to the Secretary for one or more of the members thereof, or any other person, to act as a trustee for holding records, funds, or any other committee property during periods of suspension of this subpart, or during any period or periods when regulations are not in effect and, if the Secretary determines such action appropriate, he may direct that such person or persons shall act as trustee or trustees for the committee.

§ 966.44 Excess funds.

(a) If, at the end of a fiscal period, the assessments collected are in excess of expenses incurred, such excess shall be accounted for in accordance with one of the following:

(1) If such excess is not retained in a reserve, as provided in paragraph (a)(2) of this section, to the extent practical it shall be refunded proportionately to the persons from whom it was collected.

(2) The committee, with the approval of the Secretary, may establish an

operating monetary reserve and may carry over to subsequent fiscal periods excess funds in a reserve so established: *Provided*, That funds in the reserve shall not exceed approximately one fiscal period's expenses. Such reserve funds may be used (i) to defray any expenses authorized under this part, (ii) to defray expenses during any fiscal period prior to the time assessment income is sufficient to cover such expenses, (iii) to cover deficits incurred during any fiscal period when assessment income is less than expenses, (iv) to defray expenses incurred during any period when any or all provisions of this part are suspended or are inoperative, and (v) to cover necessary expenses of liquidation in the event of termination of this part. Upon such termination any funds not required to defray the necessary expenses of liquidation, and after reasonable effort by the committee it is found impracticable to return such remaining funds to handlers, such funds shall be disposed of in such manner as the Secretary may determine to be appropriate.

[33 FR 8586, June 12, 1968]

RESEARCH AND DEVELOPMENT

§ 966.48 Research and development.

The committee, with the approval of the Secretary, may establish or provide for the establishment of marketing research and development projects designed to assist, improve, or promote the marketing, distribution, and consumption of tomatoes. The expenses of such projects shall be paid from funds collected pursuant to § 966.42.

REGULATION

§ 966.50 Marketing policy.

Prior to or at the same time as initial recommendations are made pursuant to § 966.51, the committee shall submit to the Secretary a report setting forth the marketing policy it deems desirable for the industry to follow in shipping tomatoes from the production area during the ensuring season. Additional reports shall be submitted from time to time if it is deemed advisable by the committee to adopt a new or modified marketing policy because of changes in the demand and supply situation with respect to tomatoes. The committee shall publicly announce the submission of each such marketing policy report and copies thereof shall be available at the committee's office for inspection by any producer or any handler. In determining each such marketing policy the committee shall give due consideration to the following:

(a) Market prices of tomatoes, including prices by grades, sizes, and quality in different packs, and such prices by foreign competing areas;

(b) Supply of tomatoes, by grade, size, and quality in the production area, and in other production areas, including foreign competing production areas;

(c) Trend and level of consumer income;

(d) Marketing conditions affecting tomato prices; and

(e) Other relevant factors.

§ 966.51 Recommendations for regulations.

The committee, upon complying with the requirements of § 966.50, may recommend regulations to the Secretary whenever it finds that such regulations, as are provided for in this subpart, will tend to effectuate the declared policies of the act.

§ 966.52 Issuance of regulations.

The Secretary shall limit the handling of tomatoes whenever he finds from the recommendation and information submitted by the Committee, or from other available information, that such regulation would tend to effectuate the declared policy of the act. Such regulation may:

(a) Limit, in any or all portions of the production area, the handling of particular grades, sizes, qualities (including maturity as a factor of grade or quality), or packs of any or all varieties of tomatoes, during any period; or

(b) Limit the handling of particular grades, sizes, qualities, or packs of tomatoes differently, from different varieties, for different stages of maturity, for different portions of the pro-

duction area, for different containers, for different markets, for different purposes specified in § 966.54, or any combination of the foregoing, during any period; or

(c) Limit the handling of tomatoes by establishing, in terms of grades, sizes, or both, minimum standards of quality and maturity; or

(d) Fix the size, weight, capacity, dimensions, markings (including labels and stamps), or pack of the container or containers which may be used in the packaging, transportation, sale, shipment, or other handling of tomatoes.

[20 FR 7357, Oct. 4, 1955. Redesignated at 26 FR 12751, Dec. 30, 1961, and amended at 33 FR 8586, June 12, 1968; 34 FR 19186, Dec. 4, 1969]

§ 966.53 Minimum quantities.

The committee, with the approval of the Secretary, may establish, for any or all portions of the production area, minimum quantities below which handling will be free from regulations issued or effective pursuant to §§ 966.42, 966.52, 966.54, 966.60, or any combination thereof.

§ 966.54 Shipments for special purposes.

Upon the basis of recommendations and information submitted by the committee, or other available information, the Secretary, whenever he finds that it will tend to effectuate the declared policy of the act, shall modify, suspend, or terminate regulations issued pursuant to §§ 966.42, 966.52, 966.53, 966.60, or any combination thereof, in order to facilitate handling of tomatoes for the following purposes:

(a) For export;

(b) For relief or for charity;

(c) For processing; or

(d) For other purposes which may be specified by the committee, with the approval of the Secretary.

§ 966.55 Notification of regulation.

The Secretary shall notify the committee of any regulations issued or of any modification, suspension, or termination thereof. The committee shall give reasonable notice thereof to handlers.

§ 966.56 Safeguards.

(a) The committee, with the approval of the Secretary, may prescribe adequate safeguards to prevent handling of tomatoes pursuant to § 966.53 or § 966.54 from entering channels of trade for other than the specific purpose authorized therefor, and rules governing the issuance and the contents of Certificates of Privilege if such certificates are prescribed as safeguards by the committee. Such safeguards may include requirements that:

(1) Handlers shall file applications with the committee to ship tomatoes pursuant to §§ 966.53 and 966.54; or

(2) Handlers shall obtain inspection provided by § 966.60, or pay the assessment levied pursuant to § 966.42, or both, in connection with shipments made under § 966.54; or

(3) Handlers shall obtain Certificates of Privilege from the committee to handle tomatoes effected or to be effected under the provisions of §§ 966.53 and 966.54.

(b) The committee may rescind or deny Certificates of Privilege to any handler if proof is obtained that tomatoes handled by him for the purposes stated in §§ 966.53 and 966.54 were handled contrary to the provisions of this part.

(c) The Secretary shall have the right to modify, change, alter, or rescind any safeguards prescribed and any certificates issued by the committee pursuant to the provisions of this section.

(d) The committee shall make reports to the Secretary, as requested, showing the number of applications for such certificates, the quantity of tomatoes covered by such applications, the number of such applications denied and certificates granted, the quantity of tomatoes handled under duly issued certificates, and such other information as may be requested.

Inspection

§ 966.60 Inspection and certification.

(a) During any period in which the handling of tomatoes is regulated pursuant to this subpart no handler shall

handle tomatoes unless such tomatoes have been inspected and certified as meeting the requirements of this subpart by an authorized representative of the Federal or Federal-State Inspection Service, or such other inspection service as the Secretary shall designate, and such tomatoes are covered by a valid inspection certificate except when relieved from such requirements pursuant to § 966.53 or § 966.54 or both.

(b) Insofar as the requirements of this section are concerned, the length of time for which an inspection certificate is valid may be established by the Secretary upon the recommendation of the committee.

(c) When tomatoes are inspected in accordance with the requirements of this section a copy of each inspection certificate issued shall be made available to the committee by the inspection service.

[34 FR 19186, Dec. 4, 1969]

EXEMPTIONS

§ 966.70 Procedure.

The committee may adopt, with approval of the Secretary, the procedures pursuant to which certificates of exemption will be issued to producers or handlers.

§ 966.71 Granting exemptions.

The committee shall issue certificates of exemption to any producer who applies for such exemption and furnishes adequate evidence to the committee, that by reason of a regulation issued pursuant to § 966.52 he will be prevented from handling as large a proportion of his production as the average proportion of production handled during the entire season, or such portion thereof as may be determined by the committee, by all producers in said applicant's immediate production area and that the grade, size, or quality of the applicant's tomatoes have been adversely affected by acts beyond the applicant's control and by acts beyond reasonable expectation. Each certificate shall permit the producer to handle the amount of tomatoes specified thereon. Such certificate shall be transferred with such tomatoes at time of transportation or sale.

§ 966.72 Investigation.

The committee shall be permitted at any time to make a thorough investigation of any producer's or handler's claim pertaining to exemptions.

§ 966.73 Appeal.

If any applicant for exemption certificates is dissatisfied with the determination by the committee with respect to his application, said applicant may file an appeal with the committee. Such an appeal must be taken promptly after the determination by the committee from which the appeal is taken. Any applicant filing an appeal shall furnish evidence satisfactory to the committee for a determination on the appeal. The committee shall thereupon reconsider the application, examine all available evidence, and make a final determination concerning the application. The committee shall notify the appellant of the final determination, and shall furnish the Secretary with a copy of the appeal and a statement of considerations involved in making the final determination.

§ 966.74 Records.

(a) The committee shall maintain a record of all applications submitted for exemption certificates, a record of all exemption certificates issued and denied, the quantity of tomatoes covered by such exemption certificates, a record of the amount of tomatoes handled under exemption certificates, a record of appeals for reconsideration of applications, and such information as may be requested by the Secretary. Periodic reports on such records shall be compiled and issued by the committee upon request of the Secretary.

(b) The Secretary shall have the right, to modify, change, alter, or rescind any procedure and any exemptions granted pursuant to §§ 966.70, 966.71, 966.72, 966.73, or any combination thereof.

REPORTS

§ 966.80 Reports.

Upon request of the committee, made with approval of the Secretary, each handler shall furnish to the com-

mittee, in such manner and at such time as it may prescribe, such reports and other information as may be necessary for the committee to perform its duties under this part.

(a) Such reports may include, but are not necessarily limited to, the following: (1) The quantities of tomatoes received by a handler; (2) the quantities disposed of by him, segregated as to the respective quantities subject to regulation and not subject to regulation; (3) the date of each such disposition and the identification of the carrier transporting such tomatoes; and (4) identification of the inspection certificates and the exemption certificates, if any, pursuant to which the tomatoes were handled, together with the destination of each exempted disposition, and of all tomatoes handled pursuant to §§ 966.53 and 966.54.

(b) All such reports shall be held under appropriate protective classification and custody by the committee, or duly appointed employees thereof, so that the information contained therein which may adversely affect the competitive position of any handler in relation to other handlers will not be disclosed. Compilations of general reports from data submitted by handlers is authorized, subject to prohibition of disclosure of individual handlers identities or operations.

(c) Each handler shall maintain for at least two succeeding years such records of the tomatoes received and disposed of by such handler as may be necessary to verify the reports he submits to the committee pursuant to this section.

Miscellaneous Provisions

§ 966.81 Compliance.

Except as provided in this subpart, no handler shall handle tomatoes, the handling of which has been prohibited by the Secretary in accordance with provisions of this subpart, and no handler shall handle tomatoes except in conformity to the provisions of this subpart.

§ 966.82 Right of the Secretary.

The members of the committee (including successors and alternates), and any agent or employee appointed or employed by the committee, shall be subject to removal or suspension by the Secretary at any time. Each and every order, regulation, decision, determination or other act of the committee shall be subject to the continuing right of the Secretary to disapprove of the same at any time. Upon such disapproval, the disapproved action of the said committee shall be deemed null and void, except as to acts done in reliance thereon or in compliance therewith prior to such disapproval by the Secretary.

§ 966.83 Effective time.

The provisions of this subpart, or any amendment thereto, shall become effective at such time as the Secretary may declare and shall continue in force until terminated in one of the ways specified in this subpart.

§ 966.84 Termination.

(a) The Secretary may, at any time, terminate the provisions of this subpart by giving at least one day's notice by means of a press release or in any other manner which he may determine.

(b) The Secretary may terminate or suspend the operations of any or all of the provisions of this subpart whenever he finds that such provisions do not tend to effectuate the declared policy of the act.

(c) The Secretary shall terminate the provisions of this subpart at the end of any fiscal period whenever he finds that such termination is favored by a majority of producers, who during a representative period, have been engaged in the production for market of tomatoes: *Provided*, That such majority has, during such representative period, produced for market more than fifty percent of the volume of such tomatoes produced for market.

(d) The provisions of this subpart shall, in any event, terminate whenever the provisions of the act authorizing them cease to be in effect.

§ 966.85 Proceedings after termination.

(a) Upon the termination of the provisions of this subpart the then functioning members of the committee shall continue as joint trustees for the

purpose of liquidating the affairs of the committee of all the funds and property then in the possession of or under control of the committee, including claims for any funds unpaid or property not delivered at the time of such termination. Action by said trusteeship shall require the concurrence of a majority of the said trustees.

(b) The said trustees shall continue in such capacity until discharged by the Secretary; shall, from time to time, account for all receipts and disbursements and deliver all property on hand, together with all books and records of the committee and of the trustees, to such person as the Secretary may direct; and shall, upon request of the Secretary, execute such assignments or other instruments necessary or appropriate to vest in such person full title and right to all of the funds, property and claims vested in the committee or the trustees pursuant to this subpart.

(c) Any person to whom funds, property, or claims have been transferred or delivered by the committee or its members pursuant to this section, shall be subject to the same obligations imposed upon the members of the committee and upon the said trustees.

§ 966.86 Effect of termination or amendment.

Unless otherwise expressly provided by the Secretary, the termination of this subpart or of any regulation issued pursuant to this subpart, or the issuance of any amendments to either thereof, shall not (a) affect or waive any right, duty, obligation, or liability which shall have arisen or which may thereafter arise in connection with any provision of this subpart or any regulation issued under this subpart, or (b) release or extinguish any violation of this subpart or of any regulations issued under this subpart, or (c) affect or impair any rights or remedies of the Secretary or of any other person with respect to any such violations.

§ 966.87 Duration of immunities.

The benefits, privileges, and immunities conferred upon any person by virtue of this subpart shall cease upon the termination of this subpart, except with respect to acts done under and during the existence of this subpart.

§ 966.88 Agents.

The Secretary may, by designation in writing, name any person, including any officer or employee of the United States, or name any agency in the United States Department of Agriculture, to act as his agent or representative in connection with any of the provisions of this subpart.

§ 966.89 Derogation.

Nothing contained in this subpart is, or shall be construed to be, in derogation or in modification of the rights of the Secretary or of the United States to exercise any powers granted by the act or otherwise, or, in accordance with such powers, to act in the premises whenever such action is deemed advisable.

§ 966.90 Personal liability.

No member or alternate of the committee nor any employee or agent thereof, shall be held personally responsible, either individually or jointly with others, in any way whatsoever, to any handler or to any person for errors in judgment, mistakes, or other acts, either of commission or omission, as such member, alternate, agent, or employee except for acts of dishonesty, willful misconduct, or gross negligence.

§ 966.91 Separability.

If any provision of this subpart is declared invalid, or the applicability thereof to any person, circumstance, or thing is held invalid, the validity of the remainder of this subpart, or the applicability thereof to any other person, circumstance, or thing, shall not be affected thereby.

§ 966.92 Amendments.

Amendments to this subpart may be proposed, from time to time, by the committee or by the Secretary.

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Subpart—Rules and Regulations

SOURCE: 21 FR 353, Jan. 19, 1956, unless otherwise noted. Redesignated at 26 FR 12751, Dec. 30, 1961.

GENERAL

§ 966.100 Communications.

Unless otherwise provided in the marketing agreement and order, or by specific direction of the committee, all reports, applications, submittals, requests, and communications in connection with the marketing agreement and order shall be addressed to the Florida Tomato Committee at its principal office.

DEFINITIONS

§ 966.110 Order.

"Order" means Order No. 966 (§§ 966.1 to 966.92) regulating the handling of tomatoes grown in Florida.

§ 966.111 Marketing Agreement.

"Marketing Agreement" means Marketing Agreement No. 125.

§ 966.112 Terms.

Terms used in this subpart shall have the same meaning as when used in the marketing agreement and order.

§ 966.113 Registered handler.

For purposes of this part, a registered handler is a person who had adequate facilities for grading tomatoes for market and who assumes initial responsibility for compliance with inspection, assessment, and other regulatory requirements on the handling of tomatoes grown in the production area. Any person who wishes to become a registered handler shall make application for registration with the committee on forms prescribed by and available at the principal office of the committee. If such applicant has facilities which are determined by the committee as adequate for grading tomatoes, he may be approved as a registered handler. Persons who make deliveries of ungraded tomatoes to such registered handlers are hereby determined to be exempt from otherwise applicable regulations pursuant to this part.

SAFEGUARDS

§ 966.120 Application for Certificate of Privilege.

(a) Whenever handling is regulated pursuant to § 966.53, each handler desiring to make shipments of tomatoes for any of the following purposes shall, prior thereto, apply to the committee for and obtain a Certificate of Privilege permitting such shipment:

(1) For relief or charity; or

(2) For canning.

(b) Applications for Certificates of Privilege shall be made on forms furnished by the committee. Each application shall contain the name and address of the handler, and such other information as such committee may require, such as, but not limited, to the quantity (by grade, size, quality, and variety) of tomatoes to be shipped, the mode of transportation, consignee, destination, and other appropriate information or documents necessary to safeguard against the entry of such tomatoes into trade channels other than those for which the Certificate of Privilege is granted.

§ 966.121 Issuance.

The committee, or its duly authorized agents, shall give prompt consideration to each application for a Certificate of Privilege and shall determine whether the application is approved. Approval of an application shall be evidenced by the issuance of a Certificate of Privilege authorizing the applicant named therein to ship tomatoes for a specified purpose for a specified period of time.

§ 966.122 Reports.

Each handler handling tomatoes under and pursuant to a Certificate of Privilege shall supply the committee with a report thereon within the time specified on the application for such certificate showing the name and address of the shipper, car or truck identification, loading point, destination, consignee, and, when inspection is required, the Federal-State Inspection Certificate number.

§ 966.123 Denial and appeal.

The committee may rescind a Certificate of Privilege issued to a handler, or deny a Certificate of Privilege to a handler, upon proof satisfactory to such committee, that such handler has shipped tomatoes contrary to the provisions of this part. Such committee action denying a Certificate of Privilege shall apply to and not exceed a reasonable period of time as determined by such committee. Any handler who has been denied a Certificate of Privilege, or who has had a Certificate of Privilege rescinded, may appeal to the committee for reconsideration. Such appeal shall be in writing.

EXEMPTION PROCEDURES

§ 966.130 Application.

Any person applying for exemption from regulations issued pursuant to § 966.52 shall file such application with the committee, or its duly authorized agent for such purpose, on forms to be furnished by such committee. Each application shall state the name and address of the applicant, the grade, size, and quality regulations from which exemption is requested; and facts demonstrating that the tomatoes, for which exemption is requested, were adversely affected by acts beyond his control or by acts beyond the applicant's reasonable expectation. Applications shall set forth such additional information as the committee may find necessary in making determinations with respect thereto, including, without limitation thereto, the information required on producers' applications by paragraphs (a) and (b) of this section.

(a) The location and acreage of the farm on which tomatoes for which exemption is requested, the location where such tomatoes are to be prepared for market, and the loading point from which such tomatoes are to be shipped if exemption is granted;

(b) Quantity (by grade, size, quality, and variety) of tomatoes harvested during the current season or any specific portion thereof prior to the date of application and to be harvested, subsequent to such date, during the remainder of the current season or any specific portion thereof (as may be determined pursuant to this part); an estimate of the portion of such tomatoes which can be handled under regulation issued pursuant to § 966.52, during the remainder of the season; and the reasons why all of such tomatoes cannot be handled under such regulations.

[22 FR 9132, Nov. 16, 1957. Redesignated at 26 FR 12751, Dec. 30, 1961]

§ 966.131 Investigations.

The committee may authorize investigations of applications by its employees, and such other persons as may be necessary to procure adequate information to pass upon the merits of such applications.

[22 FR 9132, Nov. 16, 1957. Redesignated at 26 FR 12751, Dec. 30, 1961]

§ 966.132 Issuance.

(a) The committee, or its duly authorized agents, shall give prompt consideration to all statements and facts relating to each application for exemption, and, pursuant to applicable provisions of this part, a determination shall be made as to whether or not the application is approved. The determination, if approving the application, shall be evidenced by the issuance of a certificate of exemption pursuant to § 966.71: *Provided*, That a separate certificate may be issued, at the request of an applicant, for each affected field.

(b) The applicant shall be notified in writing if his request for exemption is denied.

(c) Each exemption certificate issued pursuant to this subpart shall be on a form duly approved by the committee and signed by an authorized representative of such committee. At least one copy of each exemption certificate issued shall be retained in the committee records. Each such certificate shall contain the name and address of the recipient, the location of all tomatoes authorized to be shipped thereunder, the quantity (by grade, size, quality and variety) of tomatoes which will be permitted in the exempted shipments and such other information as may be deemed necessary by the committee to provide such committee, the recipient, or both, with adequate and specific in-

formation regarding such exempted tomatoes.

[22 FR 9132, Nov. 16, 1957. Redesignated at 26 FR 12751, Dec. 30, 1961]

§ 966.133 Disposition of certificates.

(a) Each lot of tomatoes handled under an exemption certificate shall be accompanied by such certificate, or such appropriate identifying information with respect to such certificate, as the committee may require, to facilitate the administration of regulatory provisions applicable thereto.

(b) Each shipment of a lot or portion thereof, of tomatoes covered by an exemption certificate shall be accompanied by a Federal-State Inspection Certificate which shall show the exemption certificate number covering the lot.

[22 FR 9132, Nov. 16, 1957. Redesignated at 26 FR 12751, Dec. 30, 1961]

§ 966.134 Reports.

Persons handling tomatoes under exemption certificates shall, at such times as may be specified in such certificates, report thereon to the committee the names and addresses of the receivers of such tomatoes, the quantity shipped (by grade, size, quality, and variety), the inspection certificates issued with respect thereto, the dates of such shipments, and such other information as may be requested by such committee in order to administer the regulatory provisions applicable thereto.

[22 FR 9132, Nov. 16, 1957. Redesignated at 26 FR 12751, Dec. 30, 1961]

§ 966.135 Appeals.

If any applicant is dissatisfied with the determination of the committee regarding an application for an exemption certificate, or any duly issued exemption certificate an appeal by such applicant may be taken to such committee in accordance with § 966.73.

[22 FR 9132, Nov. 16, 1957. Redesignated at 26 FR 12751, Dec. 30, 1961]

INSPECTION

§ 966.140 Truck shipments.

In case of the transportation by truck outside of the production area of any tomatoes which are required to be inspected and certified as complying with any applicable requirements under this part, such tomatoes shall be accompanied by, and made available for examination at any time upon request, a copy of the appropriate inspection certificate or a copy of the appropriate transfer clearance receipt (Form FV-418) issued by the Federal-State Inspection Service, the official inspection agency for this program, showing that such tomatoes have been so inspected and certified.

[21 FR 3000, May 5, 1956. Redesignated at 26 FR 12751, Dec. 30, 1961]

INTERPRETATIVE RULES

§ 966.150 Meaning of "producer".

The term "producer" is defined in § 966.8 as being any person engaged in a proprietary capacity in the production of tomatoes for market. Under the definition of "tomatoes" in § 966.5, such production must have been in the production area. Section 966.22 provides that each person selected as a committee member or alternate must be a producer, or an officer or an employee of a corporate producer. Section 966.27 provides that producers may vote for nominees for members and alternates on the Florida Tomato Committee, the administrative agency established pursuant to said marketing agreement and order. Section 966.3 defines a person as an individual, partnership, corporation, association, or other business unit. The term "person" is construed to mean the business unit which produces the tomatoes for market.

(a) The prevailing principle which shall apply to the determination of "producer" is who or which interest as a unit, whether an individual, partnership, corporation, association, or any other business unit, has the authority to pass title to the tomatoes grown and made a part of the marketable supply of tomatoes. In other words, the terms shall be limited to those who have an ownership in tomatoes produced in the production area.

(b) "Producer" means any person, as defined in this section: (1) Who or which owns and farms land resulting

in his or its ownership of the tomatoes produced thereon; (2) who or which rents or farms land, resulting in his or its ownership of all or a portion of the tomatoes produced thereon; or (3) who or which owns land which he or it does not farm and, as rental for such land, obtains the ownership of a portion of the tomatoes produced thereon.

(c) The term "partnership" shall be deemed to include a husband and wife with respect to land, the title to which, or leasehold interest in which, is vested in them as tenants in common, joint tenants, tenants by entirety, or, under community property laws, as community property. The term "partnership" shall also be deemed to include individuals, partnerships or corporations which join together by agreement, informal or otherwise, for the purpose of growing tomatoes and which, as a unit, have authority to transfer title to such tomatoes at the time they are harvested or subsequent thereto. The term "partnership" shall also include so-called "joint ventures," wherein one or more parties to the arrangement contributes capital and others contribute labor, management, equipment, or other services, or any variation of such contributions by two or more parties, so that it results in the growing of tomatoes and the authority to transfer title to the tomatoes so produced from that business unit to some other parties in the marketing chain.

(d) Each legal entity, whether an individual, a partnership, a "joint venture," or a corporation, so engaged in the production of tomatoes for market shall have one vote for each position which is to be filled for the district for which he or it is eligible to vote. In the case of a partnership or a "joint venture," such vote shall not be accepted in the absence of unanimous agreement of the respective members. In the case of a corporation, such vote shall be cast pursuant to the authorization of its board of directors. In the case of a person who owns land which he or it does not farm but, as rental for such land, obtains the ownership of a portion of the tomatoes produced thereon, such person shall be regarded as the producer of that portion and entitled to one vote, and the tenant on such land shall be regarded as the producer of the remaining portion produced on such land and also entitled to one vote.

(e) A producer eligible to vote is a person who produced tomatoes for market in a proprietary capacity in the production area during the then current fiscal period, i.e., between August 1, of the previous year and July 31 of the then current year. If a person who would otherwise qualify as a producer in a proprietary capacity in the production area planted tomatoes for market as fresh tomatoes during the current fiscal period, but (1) did not market any tomatoes in the fresh market during the current fiscal period due to adverse weather conditions, or (2) has tomatoes in production for fresh market during the current fiscal period, although still unharvested, he shall, nevertheless, be eligible as a producer to vote for committee nominees, if he produced and marketed tomatoes grown in the production area in the next preceding fiscal period.

[23 FR 2588, Apr. 19, 1958. Redesignated at 26 FR 12751, Dec. 30, 1961]

Reestablishment of Districts

§ 966.160 Reestablishment of districts.

(a) District No. 1: The county of Dade in the State of Florida.

(b) District No. 2: The counties of Brevard, Glades, Indian River, Martin, Osceola, Okeechobee, Palm Beach, St. Lucie, and Broward in the State of Florida.

(c) Terms used in this section have the same meaning as when used in said marketing agreement and this part.

[35 FR 19633, Dec. 25, 1970]

§ 966.161 Reapportionment of Committee Membership.

Pursuant to § 966.25, industry membership on the Florida Tomato Committee shall be reapportioned as follows:

(a) District 1—three members and their alternates.

(b) District 2—two members and their alternates.

(c) District 3—three members and their alternates.

(d) District 4—four members and their alternates.

[50 FR 3738, Jan. 28, 1985]

NOTE: After January 1, 1979, "Budget of Expenses and Rate of Assessment" regulations (e.g. sections .200 through .299) and "Handling" regulations (e.g. sections .300 through .399) which are in effect for a year or less, will not be carried in the Code of Federal Regulations. For FEDERAL REGISTER citations affecting these regulations, see the "List of CFR Sections Affected" in this volume.

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967.150 Marketable Allotment.
967.151 Base Quantities.
967.152 Reserve for Base Quantities.

Sec.
967.155 Revised Base Quantity formula.

REPORTS AND RECORDS

967.165 Reports.
967.166 Records.

AUTHORITY: Secs. 1-19, 48 Stat. 31, as amended; 7 U.S.C. 601-674.

Subpart—Order Regulating Handling

SOURCE: 30 FR 14266, Nov. 13, 1965, unless otherwise noted.

DEFINITIONS

§ 967.1 Secretary.

"Secretary" means the Secretary of Agriculture of the United States, or any officer or employee of the Department to whom authority has heretofore been delegated, or to whom authority may hereafter be delegated, to act in his stead.

§ 967.2 Act.

"Act" means Public Act No. 10, 73d Congress, as amended, and as reenacted and amended by the Agricultural Marketing Agreement Act of 1937, as amended (Secs. 1-19, as amended, 7 U.S.C. 601-674).

§ 967.3 Person.

"Person" means an individual, partnership, corporation, association, or any other business unit.

§ 967.4 Celery.

"Celery" means all varieties and types of celery, *apium graveolens*, grown in the production area.

§ 967.5 Production area.

"Production area" means all territory in the State of Florida.

§ 967.6 Producer.

"Producer" means any person engaged in a proprietary capacity in the production of celery.

§ 967.7 Handler.

"Handler" means any person (except a common or contract carrier of celery owned by another person) who handles harvested celery on behalf of a producer or on his own behalf.

§ 967.8 Handle.

"Handle" means to purchase harvested celery from a producer or to sell or transport harvested celery within the production area or between the production area and any point outside thereof.

§ 967.9 Marketing year, fiscal year or season.

"Marketing year," "fiscal year" or "season" means the 12 months from August 1 to the following July 31 inclusive, or such other period which the committee, with the approval of the Secretary, may establish.

§ 967.10 Committee.

"Committee" means the Florida Celery Committee established pursuant to § 967.25 of this part.

§ 967.11 Crate.

"Crate" means celery crate No. 3601 or its equivalent.

§ 967.12 Base Quantity.

"Base Quantity" means the number of crates of harvested celery determined by the committee pursuant to § 967.37 for a producer.

§ 967.13 Marketable Quantity.

"Marketable Quantity" means the total amount of celery which should be handled in a current season.

§ 967.14 Marketable Allotment.

"Marketable Allotment" means with respect to each producer the amount of harvested celery which may be purchased from, or handled on behalf of, such producer.

§ 967.15 Uniform percentage.

"Uniform percentage" means the percentage for any given season resulting from dividing the Marketable Quantity by the total Base Quantities registered by producers as provided in § 967.38.

[42 FR 32763, June 28, 1977]

§ 967.16 Grade and size.

"Grade" means any of the established grades of celery and "size" means any of the established sizes of

celery stalks per crate as defined and set forth in the U.S. Standards for Celery (§§ 51.560 to 51.588, inclusive of this title) or U.S. Consumer Standards for Celery Stalks (§§ 51.595 to 51.613, inclusive of this title), issued by the U.S. Department of Agriculture, or amendments thereto, or modifications thereof, or variations based thereon, recommended by the committee and approved by the Secretary.

[33 FR 17846, Nov. 30, 1968]

§ 967.17 Farm operation.

"Farm operation" means the production of celery for one or more holders of a Marketable Allotment by a single farming entity under contract or other arrangement.

[33 FR 17846, Nov. 30, 1968]

§ 967.18 Flow-to-Market period.

"Flow-to-Market period" means any period or periods of one or more days which the committee may establish with the approval of the Secretary for the purposes of Flow-to-Market regulations.

[33 FR 17846, Nov. 30, 1968]

Florida Celery Committee

§ 967.25 Establishment and membership.

(a) There is hereby established a Florida Celery Committee consisting of 16 members, including 15 producer or handler members and one public member to administer the terms and provisions of this part. Each shall have a respective alternate who shall have the same qualifications as the member.

(b) The Secretary, upon the recommendation of the committee, may reestablish the number of producer or handler members on the committee. In recommending any such change, the committee shall give consideration to the total number of growers and handlers in the production area during the current or previous season, and other relevant factors. A change in the number of committee members can become effective at any time, provided, the effective date is more than 30 days prior to the date on which nominations are held.

[42 FR 32763, June 28, 1977, as amended at 48 FR 10806, Mar. 15, 1983]

§ 967.26 Eligibility.

Each member and alternate of the committee, except for the public member and alternate, shall be at the time of his selection and during his term of office, a producer or handler, or an officer or employee of a producer or handler in the group for which selected. The public member shall be neither a producer nor handler and shall have no direct financial interest in the production or marketing, except as a consumer, of agricultural products.

[42 FR 32763, June 28, 1977]

§ 967.27 Nominations.

Nominations for committee members and alternates may be made in the following manner:

(a) Growers in each group, as established in paragraph (d) or as reestablished pursuant to paragraph (g) of this section, may nominate persons for each member and alternate position in their respective group.

(b) A meeting of producers shall be held in the production area to nominate members and alternates to the committee. The incumbent committee shall hold such meeting or cause it to be held prior to July 1 of each year. Nominations thereat shall be certified to by the committee and submitted to the Secretary by July 1 of each year together with information deemed pertinent by the committee or as requested by the Secretary. If such nominations are not made in the manner specified by July 1, the Secretary may select representatives for such positions without nominations.

(c) At each such meeting, the eligibility of each producer, and each handler shall be recorded for purposes of determining participation in respective groupings.

(d) Five groups shall be established from which nominations and committee selections shall be made, as follows:

Group 1—South Florida District: Martin, Dade, Broward, Collier, Monroe, Lee, Charlotte, St. Lucie, Okeechobee, Highlands, Indian River, Glades, Hendry, and

Palm Beach Counties—five (5) members and their alternates.

Group 2—Central Florida District: Orange, Seminole, Lake, Polk, Osceola, Brevard, and Volusia Counties—three (3) members and their alternates.

Group 3—West Coast-North Florida District: All the counties not embraced in Groups 1 and 2—two (2) members and their alternates.

Group 4—The producer or producers whose celery was handled by the handler who handled in the previous or current season, whichever is applicable, the second largest volume of celery—two (2) members and their alternates.

Group 5—The producer or producers whose celery was handled by the handler who handled in the previous or current season, whichever is applicable, the largest volume of celery—three (3) members and their alternates.

(e) Each producer is entitled to cast only one vote for each position in the group wherein he produced celery for market in the current season and possesses a Base Quantity. If a producer has so qualified in more than one group, he may elect the group in which he shall vote but he can vote for nominees in only one group. Any producer in Group 4 or Group 5 shall not be entitled to vote for nominees in other groups.

(f) The members of the committee selected by the Secretary pursuant to § 967.32 shall nominate a public member and alternate member of the committee. The committee shall recommend rules for receiving names of persons to be considered for nomination to the public member and alternate positions. Rules shall also be recommended for establishing eligibility of persons nominated to the public member and alternate positions. The persons nominated for the public member and alternate positions shall be submitted by the incumbent committee to the Secretary by the July 1 of each year together with information deemed pertinent by the committee or as requested by the Secretary.

(g) The Secretary, upon recommendation of the committee, may reestablish groups and may reapportion committee membership among the various groups. In recommending such changes, the committee shall give consideration to: (1) Changes in the relative positions of existing groups with respect to celery production and shipments; (2) changes in the numbers of producers and handlers in each group; and (3) other relevant factors. A change in the establishment of groups or in apportionment of members among groups can become effective at any time, provided, the effective date is more than 30 days prior to the date on which nominations are held.

[30 FR 14266, Nov. 13, 1965, as amended at 33 FR 17846, Nov. 30, 1968; 42 FR 32763, June 28, 1977; 48 FR 10806, Mar. 15, 1983]

§ 967.28 Alternate members.

An alternate for a member shall act in the place of such member (a) in his absence, or (b) in the event of his death, removal, resignation, or disqualification, until a successor for his unexpired term has been selected and has qualified.

§ 967.29 Procedure.

(a) At an assembled meeting, all votes shall be cast in person, and a simple majority of committee members (including alternates acting for absent members) shall constitute a quorum. Decisions of the committee shall require the concurring vote of a majority of the members and alternates in attendance and entitled to vote.

(b) If both a member and his alternate are unable to attend a committee meeting, the committee may designate any other alternate present from the same group to serve in the place of the member.

(c) The committee may provide for meeting by telephone, telegraph, or any other means of communication. All votes shall be recorded in the minutes of each meeting so as to reflect how each member or alternate voted.

[30 FR 14266, Nov. 13, 1965, as amended at 48 FR 10806, Mar. 15, 1983]

§ 967.30 Powers.

The committee shall have the following powers:

(a) To administer this subpart in accordance with its terms and provisions;

(b) To make rules and regulations to effectuate the terms and provisions of this subpart;

(c) To receive, investigate, and report to the Secretary complaints of violations of this part;

(d) To recommend to the Secretary amendments to this subpart.

§ 967.31 Duties.

The committees shall have, among others, the following duties:

(a) To select from among its members and alternates such officers and subcommittees, and to adopt such rules or bylaws for the conduct of its business as it deems necessary;

(b) To employ necessary personnel, including professional and technical services, fix their compensation and terms of employment;

(c) To keep minutes, books and records which will reflect all the acts and transactions of the committee and which shall be subject to examination by the Secretary;

(d) To prepare periodic statements of the financial operations of the committee and to make copies of each such statement available to producers and handlers for examination at the offices of the committee;

(e) To cause the books of the committee to be audited by a certified public accountant at least once each marketing year and at such other times as the committee may deem necessary, or as the Secretary may request; to submit two copies of each such audit report to the Secretary, and to make available a copy which does not contain confidential data for inspection at the offices of the committee by producers and handlers;

(f) To act as intermediary between the Secretary and any producer or handler;

(g) To investigate and assemble data on the growing, handling, and marketing conditions with respect to celery;

(h) To submit to the Secretary such available information as he may request or the committee may deem desirable and pertinent;

(i) To notify producers and handlers of all meetings of the committee to consider recommendations for regulations and of all regulatory actions taken affecting producers and handlers;

(j) To give the Secretary the same notice of meetings of the committee and its subcommittees as is given to its members;

(k) To investigate compliance and use means available to prevent violations of the provisions of this part; and

(l) To consult, cooperate, and exchange information with other marketing agreement committees and other individuals or agencies in connection with all proper committee activities and objectives under this part.

(m) To secure suitable candidates for the public member and alternate positions, and to nominate persons for such positions on the committee.

[30 FR 14266, Nov. 13, 1965, as amended at 42 FR 32763, June 28, 1977]

§ 967.32 Selection and term of office.

(a) *Selection.* The committee shall be selected by the Secretary from nominees submitted by the committee, or from among other eligible persons. Each person so selected shall qualify by filing a written acceptance with the Secretary prior to assuming the duties of the position.

(b) *Term of office.* The term of office of each committee member and alternate shall be for a period of one year beginning August 1 and ending the following July 31. Committee members and alternates shall serve for the term of office for which they are selected and have qualified and until their respective successors are selected and have qualified.

§ 967.33 Vacancy.

Any vacancy occasioned by the death, removal, resignation, or disqualification of any committee member or alternate shall be recognized by the committee by certifying to the Secretary a successor for the unexpired term unless a selection is deemed unnecessary by the Secretary.

§ 967.34 Expenses.

Members and alternates of the committee shall serve without compensation, but may be reimbursed for expenses necessarily incurred by them in attending committee and subcommittee meetings and in the performance of their duties under this part.

VOLUME LIMITATIONS

§ 967.35 Marketing policy.

(a) The committee shall meet, consider and adopt a marketing policy for each season. Committee considerations shall include probable celery production within the production area and in competing areas, the grade, size, quality, and quantity of celery which should be made available to market during such season to meet market requirements and establish orderly marketing conditions, and other pertinent information. On the basis of these considerations the committee shall adopt a marketing policy for such season as follows:

(1) Annual Marketable Quantity—A meeting to adopt a policy regarding the annual Marketable Quantity of celery to be marketed shall be held not later than June 15 of each year. Prior to November 1 of each year, the committee shall review such marketing policy and as changes are indicated, the committee may adopt appropriate revision.

(2) Other regulations—Prior to or at the same time initial recommendations in any season are made pursuant to § 967.40(a) the committee shall prepare a marketing policy statement concerning the necessity for such regulations.

(b) Notice of and recommendations from, the initial marketing policy for a marketing season or any later changes shall be submitted promptly to the Secretary and notice of such marketing policy shall be given to handlers, producers and other interested parties by bulletins or other appropriate media.

[33 FR 17846, Nov. 30, 1968]

§ 967.36 Marketable Quantity.

(a) Whenever the committee recommends and the Secretary finds on the basis of such recommendations or other information, that limiting the total quantity of celery to be handled during a marketing season, or revising a Marketable Quantity previously established, would tend to effectuate the declared policy of the act, he shall establish the Marketable Quantity which handlers may handle as first handlers for such season, or revise a previously established Marketable Quantity.

(b) When a Marketable Quantity is established for any season, no handler may handle any harvested celery during such season unless (1) it is within the Marketable Allotment of a producer who has a Base Quantity pursuant to § 967.38, and (2) such producer authorized the first handler thereof to purchase or otherwise handle it.

§ 967.37 Base Quantities.

(a)(1) Base Quantities for producers with a history of production and order participation for the period 1965-66 through 1976-77 shall be Base Quantities in effect for the 1976-77 season, as recorded by the Florida Celery Committee on December 15, 1976, subject to modifications relating to current production and marketing experience specified in (b) through (e) of this section, or to transfers pursuant to § 967.39.

(2) Base Quantities for other producers shall be established pursuant to Base Quantity reserve as specified in paragraph (d) of this section, subject to modifications relating to current production and marketing experience specified in (b) through (e) of this section, or to transfer pursuant to § 967.39.

(b) Periodically, but at least once each five years, the committee shall review Base Quantities and recommend any changed in the formula, to be prescribed by the Secretary, for determining Base Quantities which may be deemed appropriate.

(c) The committee may recommend rules pertaining to producers who wish to obtain, hold, or transfer Base Quantities or Marketable Allotments. Such rules shall be subject to approval of the Secretary and may require producers to file reports and information with respect thereto, including but not limited to quantities marketed in the representative period, their qualifications as producers, as well as particulars on sale and handling of celery as a result of any Base Quantities or Marketable Allotments that may be issued to them.

(d)(1) Beginning with the 1978-79 season, a reserve in the amount of six percent of the total Base Quantities shall be established annually. Such reserve shall be used for the issuance of Base Quantities to new producers and adjustments in Base Quantities for producers with existing Base Quantities, with 50 percent being made available for new producers and 50 percent available for adjustments for producers with existing Base Quantities.

(2) Base Quantities issued to new producers shall be permanent, subject to requirements of § 967.37(e). Base Quantities issued to new producers shall not be transferable within three years after issuance. Any adjustments in Base Quantities issued to producers with existing Base Quantities shall be effective for one season only and a new request by such producers for adjustment in Base Quantity shall be submitted each season.

(3) The committee may recommend rules for establishing such reserve and for procedures whereby persons may apply for Base Quantities thereunder. Such rules shall be subject to approval by the Secretay, Rules may provide for open informal hearings by the committee on applicants' requests and may establish guides or standards for equitable and thorough consideration of pertinent factors relating to each case, including but not limited to past production of celery by applicant, acreage planted, average yields, the production capacity of the farm or land the applicant expects to use, land, labor, and equipment available to applicant for celery production, economic and marketing factors, and other factors deemed pertinent.

(4) Each person filing an application hereunder for a new Base Quantity or adjustment in an established Base Quantity shall be notified by the committee of its determination thereon. Such determination and considerations appertaining thereto shall be subject to review by the Secretary. If a Base Quantity is issued to an applicant hereunder, the requirements of § 967.38(c) shall then apply.

(e) A condition for the continuing validity of a Base Quantity is production of celery thereunder. If no bona fide effort is made to produce and sell celery thereunder for two consecutive seasons commencing with the 1977-78 season, the Base Quantity may be declared invalid due to lack of use and cancelled at the end of the second season of nonproduction. The committee shall determine criteria, subject to approval by the Secretary, as to whether a bona fide effort has been made to produce and sell celery, including one requirement that the producer must have sold at least 50 percent of each of his seasonal Marketable Allotments, unless prevented from doing so by acts of God or other circumstances beyond his control.

(f) Annual registration of Base Quantity holders will be required no later than May 1 or such other date as may be approved pursuant to regulations. For the 1977-78 season Base Quantity holders shall register within 30 days following the effective date of this part but no later than July 31, 1977. Any Base Quantity holder who does not register or who has not made firm and substantial commitments to produce celery for the forthcoming season shall have his Base Quantity eliminated from the calculations in determining the Uniform Percentage. However, such procedure will not cause the Base Quantity holder to lose his Base Quantity.

[30 FR 14266, Nov. 13, 1965, as amended at 42 FR 32763, June 28, 1977]

§ 967.38 Marketable Allotments.

(a) When the Secretary establishes a season's Marketable Quantity, a percentage shall be determined by dividing the amount fixed as the season's Marketable Quantity by the total Base Quantities of producers who have registered with the committee pursuant to § 967.37(f).

(b) The Marketable Allotment for each producer shall be established by the committee by multiplying his Base Quantity by the appropriate Uniform Percentage. The resulting amount shall be his Marketable Allotment for a season. The committee shall notify each producer of his allotment.

(c) After a producer has been notified of his Marketable Allotment, he shall, in turn, notify the committee, on forms furnished by it, the handler

or handlers who will first handle all or a portion of his Marketable Allotment for the ensuing season, as well as the number of crates each such handler will so handle. This information shall be sent by the committee to the respective handlers.

(d) If the committee recommends and the Secretary approves, that no season's Marketable Quantity be established, the Marketable Allotment of each producer shall be unlimited.

(e) When the Marketable Quantity is equal to or smaller than total Base Quantities, the first 37,500 crates of each producer's Base Quantity shall be subtracted from both the Marketable Quantity and total Base Quantities when the Uniform Percentage is calculated in this section (§ 967.38(a)), and the Uniform Percentage for the first 37,500 crates will be 100 percent. In the event the Marketable Quantity exceeds total Base Quantities, there shall be no exemption for the first 37,500 crates and the Uniform Percentage shall be applied to each producer's total Base Quantity.

(f) Marketable allotments shall be issued only to producers who have registered by May 1, or such other date prescribed by the Secretary, and indicated firm and substantial commitments for the production of celery for the forthcoming season.

[30 FR 14266, Nov. 13, 1965, as amended at 42 FR 32764, June 28, 1977]

§ 967.39 Transfers.

(a) Producers' Base Quantities or Marketable Allotments, or both, may be transferred upon appropriate requests therefor, pursuant to § 967.37 and upon approval of the committee.

(b) Any producer with a Base Quantity may request a transfer of all or a portion of his Base Quantity for a specified period of time.

(c) Any producer with a Marketable Allotment may request a transfer of all or a portion of his Marketable Allotment during a current season.

(d) Producers must advise the committee, prior to final approval of a transfer, that a different amount will be handled by a handler or handlers due to any transfer authorized in paragraph (c) of this section. The committee, upon receipt of such notification, shall advise the handler or handlers involved of the adjustments in the amount they may handle as first handlers thereof for the current season, based upon the number of crates involved in the transfer, as well as issue revised Marketable Allotments to the producers involved.

Other Regulations

§ 967.40 Issuance of other regulations.

(a) The Secretary may limit the handling of celery whenever he finds from the recommendations and information submitted by the committee, or from other available information, that such regulations would tend to effectuate the declared policy of the act.

(b) Such regulations may:

(1) Establish specific Flow-to-Market periods and limit the total quantity of celery which may be handled therein;

(i) The committee may recommend and the Secretary may issue such rules as are necessary to effectuate the Flow-to-Market procedures and regulations.

(ii) The committee may recommend to the Secretary and the Secretary may limit in conformity with paragraph (a) of this section the total quantity of celery which is deemed advisable to be handled during any specified Flow-to-Market period or periods.

(iii) In making its recommendations, the committee shall give due consideration to the following factors:

(*a*) Market prices for celery; (*b*) supply of celery on hand at shipping point, on track at, and en route to, the principal markets; (*c*) supply, maturity, and condition of celery in the production area; (*d*) market prices and supplies of celery from competitive producing areas, and supplies of other competitive vegetables; (*e*) trend and level in consumer income; and (*f*) other relevant factors as specified by the committee in its recommendation.

(iv) At any time during a Flow-to-Market period for which the Secretary has fixed the quantity of celery which may be handled, the committee may recommend to the Secretary that such quantity be increased for such period. Each such recommendation, together with the committee's reason for such

recommendation, shall be submitted promptly to the Secretary.

(v) Whenever the Secretary finds, from the recommendations and information submitted by the committee, or from other available information, that to limit the quantity of celery which may be handled during a specified Flow-to-Market period will tend to effectuate the declared policy of the Act, he shall fix such quantity. The quantity so fixed for any such period may be increased by the Secretary at any time during such period. The Secretary may upon the recommendation of the committee, or upon other available information, terminate or suspend any regulation at any time.

(vi)(*a*) At the times specified by the committee, each handler of celery shall submit to the committee, on forms to be supplied by the committee, a report setting forth the number of crates each producer or farm operation will make available to him for handling during the applicable period; and in the case of a farm operation, shall specify the number of total crates available which are to be attributed to each holder of a Marketable Allotment who is involved in the farm operation so that each holder of a Marketable Allotment is treated as an individual producer for the purposes of the Flow-to-Market regulation.

(*b*) Such written request and report shall be submitted at such time and in such manner and contain such other information as the committee may recommend and the Secretary approve.

(*c*) The committee shall determine the accuracy of the information submitted pursuant to this section. Whenever the committee finds that there is an error, omission, or inaccuracy in any such information, it shall correct the same and shall give the person who submitted the information a reasonable opportunity to discuss with the committee the factors considered in making the correction.

(vii)(*a*) Whenever the Secretary has fixed the total quantity of celery that may be handled during a regulated Flow-to-Market period, the committee shall compute under a uniform rule, for each producer entitled thereto, the quantity of celery which may be handled for or purchased from him by handlers during such period. The amount to be handled under these regulations will be in addition to that quantity of harvested celery a handler has on hand at the commencement of the specified Flow-to-Market period, as reflected in required reports approved for committee use by the Secretary.

(*b*) The percentage obtained by dividing the quantity of crates set by the Secretary for such Flow-to-Market period by the total creates stated to be available by all handlers for such period shall be applied uniformly to the amount available for handling for each producer to determine the maximum number of crates that may be handled by or for him during that period: *Provided,* That it is within his unused Marketable Allotment pursuant to § 967.38: *And provided further,* That until more than 37,500 crates of his production has been handled on his behalf during the current season, the handler thereof shall not have the number of crates he handles for or sells on behalf of such producer reduced by the Flow-to-Market regulation; however such handler shall be limited to 100 percent of that which was stated to be marketable in such Flow-to-Market period for that producer.

(*c*) For the purpose of determining compliance with Flow-to-Market limitations, a tolerance of 1 percent of an allotment holder's allowed Flow-to-Market quantity for such period or 200 crates, whichever is less, is permitted.

(viii) Verification of compliance with allotments: During any season or Flow-to-Market period for which allotment regulations are in effect, all acreage of celery included in applications for allotments shall be subject to field checking by the committee to determine compliance with allotments. Checking procedures, methods for establishing committee determinations, means for notifying handlers and other persons of the extent to which allotments have been used shall be in accordance with rules recommended by the committee and approved by the Secretary.

(2) Establish total holidays by limiting the handling of harvested celery

during a specified period or periods. The amount to be handled under these regulations will be that quantity of harvested celery a handler has on hand at the commencement of the holiday, as reflected in required reports approved for committee use by the Secretary;

(3) Limit in any or all portions of the production area the handling of particular grades, sizes, qualities, containers, or packs or any combination thereof, of celery during any period; also, limit the handling of particular grades, sizes, or qualities, or celery differently, for different varieties, for different portions of the production area, for different markets, for different sizes and types of containers, or for any combination of the foregoing, during any period;

(4) Limit the handling of celery when parity prices have been reached by establishing and maintaining minimum standards of quality and maturity in terms of grades or sizes;

(5) Require uniform inspection, grading and certification of celery and proper labeling of containers for celery to show the grade or size, or both, thereof;

(6) Fix the size, capacity, weight, dimensions, or pack of the container or containers which may be handled.

(c) Regulations issued hereunder may be amended, modified, suspended, or terminated by the Secretary whenever it is determined:

(1) That such action is warranted upon recommendation of the committee or on the basis of other available information;

(2) That such action is essential to provide relief from inspection, or regulations under paragraph (b) of this section, for minimum quantities less than customary commercial transactions as recommended by the committee and approved by the Secretary; or

(3) That regulations issued hereunder no longer tend to effectuate the declared policy of the Act.

[33 FR 17847, Nov. 30, 1968]

§ 967.41 Handling for special purposes.

Regulations in effect pursuant to § 967.38 or § 967.40 may be modified, suspended, or terminated to facilitate handling of celery for:

(a) Exports;

(b) Relief or charity;

(c) Experimental purposes; and

(d) Other purposes which may be recommended by the committee and approved by the Secretary.

[33 FR 17847, Nov. 30, 1968]

§ 967.42 Safeguards.

The committee, with the approval of the Secretary, may establish through rules such requirements as may be necessary to insure that shipments made pursuant to § 967.41 were handled and used for the purpose stated.

[33 FR 17847, Nov. 30, 1968]

Inspection

§ 967.43 Inspection and certification.

(a) Whenever the handling of celery is regulated pursuant to § 967.40(b) (3) through (5), or at other times when recommended by the committee and approved by the Secretary, no handler shall handle celery unless such celery is inspected by an authorized representative of the Federal or Federal-State Inspection Service and is covered by a valid inspection certificate, except when relieved from such requirements pursuant to § 967.40(c) or paragraph (b) of this section.

(b) Regrading, resorting, or repacking any lot of celery shall invalidate any prior inspection certificate insofar as the requirements of this section are concerned. No handler shall handle celery after it has been regraded, resorted, repacked or in any way additionally prepared for market, unless such celery is inspected by an authorized representative of the Federal or Federal-State Inspection Service. Such inspection requirements on regraded, resorted, or repacked celery may be modified, suspended, or terminated upon recommendation by the committee, and approval of the Secretary.

(c) Upon recommendation of the committee and approval by the Secretary, any or all celery so inspected and certified shall be identified by appropriate seals, stamps, or tags to be affixed to the containers by the handler under the direction and supervision of a Federal or Federal-State Inspector or the committee.

(d) Insofar as the requirements of this section are concerned, the length of time for which an inspection certificate is valid may be established by the committee with the approval of the Secretary.

(e) When celery is inspected in accordance with the requirements of this section, a copy of each inspection certificate issued shall be made available to the committee by the inspection service.

(f) The committee may recommend and the Secretary may require that no handler shall transport or cause the transportation of celery by motor vehicle or by other means unless such shipment is accompanied by a copy of the inspection certificate issued thereon, or other document authorized by the committee to indicate that such inspection has been performed. Such certificate or document shall be surrendered to such authority as may be designated by the committee.

[33 FR 17847, Nov. 30, 1968]

Marketing Research and Development

§ 967.44 Research and development.

The committee may, with the approval of the Secretary, establish or provide for the establishment of projects involving production research, marketing research and development projects, and marketing promotion including paid advertising, designed to assist, improve, or promote the marketing, distribution, and consumption or efficient production of celery. The expenses of such projects shall be paid by funds collected pursuant to § 967.61 or § 967.63. Upon conclusion of each program, but at least annually, the committee shall summarize and report on the program status and accomplishments to its members and the Secretary. A similar report to the committee shall be required of any contracting party on any paid advertising or major program. Also, for each advertising or major program the contracting party shall be required to maintain records of money received and expenditures and such shall be available to the committee and the Secretary. The committee shall, with the approval of the Secretary, establish criteria which will serve as a guide for it to determine what constitutes a major program.

[33 FR 17847, Nov. 30, 1968, as amended at 42 FR 32764, June 28, 1977]

Expenses and Assessments

§ 967.60 Expenses.

The committee may incur such expenses as the Secretary finds reasonable and likely to be incurred by it during each fiscal year for its maintenance and functioning, and for such other purposes as the Secretary determines appropriate under this part. To assist the Secretary, the committee shall submit a budget of expenses and prospective revenue to him for each season, with explanations therefor, and recommendations as to the rate of assessment for such fiscal year.

[30 FR 14266, Nov. 13, 1965. Redesignated at 33 FR 17846, Nov. 30, 1968]

§ 967.61 Assessment and requirements for payment.

Each first handler shall pay to the committee upon demand, his pro rata share of the expenses authorized by the Secretary for each marketing year. Each handler's pro rata share shall be the rate of assessment per unit fixed by the Secretary times the total assessable units of celery which he handles. At any time during or after a marketing year, the Secretary may increase the rate of assessment as necessary to cover authorized expenses. The payment of expenses and assessments for the maintenance and functioning of the committee may be required during periods when no regulations are in effect.

[30 FR 14266, Nov. 13, 1965. Redesignated at 33 FR 17846, Nov. 30, 1968]

§ 967.62 Accounting.

At the end of a fiscal year, funds in excess of such year's expenses may be placed in an operating reserve not to exceed approximately one marketing year's operational expenses or such lower limits as the committee, with the approval of the Secretary, may establish. Funds in such reserve shall be available for use by the committee for expenses authorized pursuant to

§ 967.40. Funds in excess of those necessary to pay expenses and those placed in the operating reserve shall be refunded pro rata to handlers from whom such funds were collected.

[30 FR 14266, Nov. 13, 1965. Redesignated at 33 FR 17846, Nov. 30, 1968]

§ 967.63 Contributions.

The committee may accept voluntary contributions but these shall only be used to pay expenses incurred pursuant to § 967.44. Furthermore, such contributions shall be free from any encumbrances by the donor and the committee shall retain complete control of their use.

[42 FR 32764, June 28, 1977]

REPORTS AND RECORDS

§ 967.70 Reports.

Upon request of the committee, with the approval of the Secretary, each producer and handler shall furnish to the committee such reports and information as may be necessary to enable it to exercise its powers and perform its duties under this part. Such reports may include, but are not necessarily limited to the following:

(a) Reports by any or all handlers on the number of crates of harvested celery purchased from or handled on behalf of any or all producers during any prior or current season;

(b) Reports by any or all producers on the number of crates of harvested celery sold by such producers during any prior or current season or the current quantities available for sale by such producers;

(c) Reports by any or all producers on the number of crates of harvested celery sold to or through any or all handlers during any prior or current period.

[30 FR 14266, Nov. 13, 1965. Redesignated at 33 FR 17848, Nov. 30, 1968]

§ 967.71 Records.

Each producer and handler shall maintain and make available upon request, such records pertaining to celery handled by him as will substantiate the reports required by the committee. All such records shall be maintained for not less than one year after the termination of the marketing season to which such records relate.

[30 FR 14266, Nov. 13, 1965. Redesignated at 33 FR 17848, Nov. 30, 1968]

§ 967.72 Verification of reports and records.

For the purpose of assuring compliance with record keeping requirements and verifying reports of producers and handlers, the Secretary and the committee, through its duly authorized employees, shall have access to any premises where applicable records are maintained, where celery is handled, and at any time during reasonable business hours shall be permitted to inspect such producer and handler premises and any and all records of such persons with respect to matters within the purview of this part.

[30 FR 14266, Nov. 13, 1965. Redesignated at 33 FR 17848, Nov. 30, 1968]

§ 967.73 Confidential information.

All reports, data, or information obtained by the committee constituting a trade secret or disclosing the trade position, financial condition, or business operations of particular producers or handlers shall be kept in the custody and under the control of one or more committee employees and shall be treated as confidential. Compilations of general reports from data submitted by producers or handlers are authorized, subject to prohibition of disclosure of individual producers' or handlers' identities or operations.

[30 FR 14266, Nov. 13, 1965. Redesignated at 33 FR 17848, Nov. 30, 1968]

MISCELLANEOUS PROVISIONS

§ 967.80 Compliance.

No person may handle celery except in conformity with the provisions of this part.

[30 FR 14266, Nov. 13, 1965. Redesignated at 33 FR 17848, Nov. 30, 1968]

§ 967.81 Right of the Secretary.

The members and alternates of the committee and any agents, employees or representatives thereof, shall be subject to removal or suspension by the Secretary at any time. Each and

every regulation, decision, determination or other act of the committee shall be subject to the continuing right of the Secretary to disapprove of the same at any time. Upon such disapproval, the disapproved action of the committee shall be deemed null and void, except as to acts done in reliance thereon or in compliance therewith prior to such disapproval by the Secretary.

[30 FR 14266, Nov. 13, 1965. Redesignated at 33 FR 17848, Nov. 30, 1968]

§ 967.82 Derogation.

Nothing in this part is, or shall be construed to be, in derogation or in modification of the rights of the Secretary, or of the United States (a) to exercise any powers granted by the act or otherwise, or (b) in accordance with such powers, to act in the premises whenever such action is deemed advisable.

[30 FR 14266, Nov. 13, 1965. Redesignated at 33 FR 17848, Nov. 30, 1968]

§ 967.83 Agents.

The Secretary may by designation in writing, name any person, including any officer or employee of the Government, or name any agency or division in the U.S. Department of Agriculture, to act as his agent or representative in connection with any of the provisions of this part.

[30 FR 14266, Nov. 13, 1965. Redesignated at 33 FR 17848, Nov. 30, 1968]

§ 967.84 Effective time.

The provisions of this part shall become effective at such time as the Secretary may declare above his signature to this part, and shall continue in force until terminated in one of the ways specified in § 967.55.

[30 FR 14266, Nov. 13, 1965. Redesignated at 33 FR 17848, Nov. 30, 1968]

§ 967.85 Termination.

(a) The Secretary may at any time terminate the provisions of this part by giving at least one day's notice by means of a press release or in any other manner which he may determine.

(b) The Secretary shall terminate the provisions of this part at the end of any fiscal year whenever he finds that such termination is favored by a majority of producers who, during the preceding fiscal year, have been engaged in the production of celery for market; provided, that such majority have, during such period produced for market more than 50 percent of the volume of such celery produced for market, but such termination shall be effective only if announced on or before August 1 of the then current fiscal year.

(c) The provisions of this part shall, in any event, terminate whenever the provisions of the act authorizing it cease to be in effect.

[30 FR 14266, Nov. 13, 1965. Redesignated at 33 FR 17848, Nov. 30, 1968]

§ 967.86 Proceedings after termination.

(a) Upon the termination of the provisions of this part, the then functioning members of the committee shall continue as joint trustees, for the purpose of liquidating the affairs of the same committee, of all the funds and property then in possession of, or under control of such committee, including claims for any funds unpaid or property not delivered at the time of such termination.

(b) The said trustees (1) shall continue in such capacity until discharged by the Secretary; (2) shall, from time to time, account for all receipts and disbursements, or deliver all property on hand, together with all books and records of the committee and of the joint trustees, to such person as the Secretary may direct; and (3) shall, upon the request of the Secretary, execute such assignments or other instruments necessary and appropriate to vest in such person full title and right to all of the funds, property, and claims vested in the committee, or the joint trustees pursuant to this part.

(c) Any funds collected pursuant to § 967.41 over and above the amounts necessary to meet outstanding obligations and expenses necessarily incurred during the operation of this part and during the liquidation period, shall be returned to handlers as soon as practicable after the termination of

this part. The refund to each handler shall be represented by the excess of the amount paid by him over and above his pro rata share of the expenses.

(d) Any person to whom funds or claims have been transferred or delivered by the committee, or its members, pursuant to this section, shall be subject to the same obligations imposed upon the members of said committee and upon the said joint trustees.

[30 FR 14266, Nov. 13, 1965. Redesignated at 33 FR 17847, Nov. 30, 1968]

§ 967.87 Effect of termination or amendments.

Unless otherwise expressly provided by the Secretary, the termination of this part or of any regulation issued pursuant to this part, or the issuance of any amendment to either thereof, shall not (a) affect or waive any right, duty, obligation, or liability which shall have arisen or which may thereafter arise in connection with any provision of this part or any regulation issued hereunder, or (b) release or extinguish any violation of this part or any regulation issued hereunder, or (c) affect or impair any rights or remedies of the Secretary or any other person with respect to any such violation.

[30 FR 14266, Nov. 13, 1965. Redesignated at 33 FR 17847, Nov. 30, 1968]

§ 967.88 Personal liability.

No member or alternate of the committee, nor any employee or agent thereof, shall be held personally responsible, either individually or jointly with others, in any way whatsoever, to any handler, or to any other person for errors in judgment, mistakes, or other acts, either of commission or omission as such member, alternate, employee, or agent except for acts of dishonesty.

[30 FR 14266, Nov. 13, 1965. Redesignated at 33 FR 17847, Nov. 30, 1968]

§ 967.89 Duration of immunities.

The benefits, privileges and immunities conferred upon any person by virtue of this part shall cease upon its termination, except with respect to acts done under and during the existence of this part.

[30 FR 14266, Nov. 13, 1965. Redesignated at 33 FR 17847, Nov. 30, 1968]

§ 967.90 Separability.

If any provision of this part is declared invalid or the applicability thereof to any person, circumstance, or thing is held invalid, the validity of the remainder of this part or the applicability thereof to any other person, circumstance, or thing shall not be affected thereby.

[30 FR 14266, Nov. 13, 1965. Redesignated at 33 FR 17847, Nov. 30, 1968]

Subpart—Rules and Regulations

SOURCE: 30 FR 15416, Dec. 15, 1965, unless otherwise noted.

GENERAL

§ 967.100 Communications.

Unless otherwise provided in the marketing agreement and order, or by specific direction of the committee, all reports, applications, submittals, requests, and communications in connection with the marketing agreement and order shall be addressed to the Florida Celery Committee, 4401 East Colonial Drive, Post Office Box 20067, at Orlando, Fla.

DEFINITIONS

§ 967.110 Order.

"Order" means Order No. 967 (§§ 967.1-967.60) regulating the handling of celery grown in Florida.

§ 967.111 Marketing Agreement.

"Marketing Agreement" means Marketing Agreement No. 149.

§ 967.112 Terms.

Except as otherwise provided herein, terms used in this subpart shall have the same meaning as when used in the marketing agreement and order.

INTERPRETATIVE RULES

§ 967.130 Producer.

(a) "Producer" shall be deemed to include any person: (1) Who or which

owns and farms land resulting in his or its ownership of the celery produced thereon; (2) who or which rents and farms land, resulting in his or its ownership of all or a portion of the celery produced thereon; or (3) who or which owns land which he or it does not farm and, as rental for such land, obtains the ownership of a portion of the celery produced thereon; or (4) who or which has celery produced on his or its behalf which results in his or its ownership of the celery so produced.

(b) The term "producer" is defined in § 967.6 as being any person engaged in a proprietary capacity in the production of celery (as defined in § 967.4). The term "person" is construed to mean the business unit which produces celery for market. The term producer shall be limited to those who have an ownership in celery produced in the production area.

(c) The term "partnership" shall be deemed to include a husband and wife with respect to land, the title to which, or leasehold interest in which, is vested in them as tenants in common, joint tenants, or tenants by entirety, or, under community property laws, as community property. The term "partnership" shall also be deemed to include two or more persons which join together by agreement, informal or otherwise, for the purpose of producing celery and which, as a unit, has ownership of such celery. The term "partnership" shall also include so-called "joint ventures," wherein one or more parties to the arrangement contribute capital and others contribute labor, management, equipment, or other services, or any variation of such contributions by two or more parties, so that it results in the production of celery for market and ownership thereof by such joint venture.

[30 FR 15416, Dec. 15, 1965, as amended at 43 FR 15609, Apr. 14, 1978]

§ 967.135 Reestablishment of committee.

Pursuant to § 967.25(b), the Florida Celery Committee is reestablished to consist of 12 members, including eleven producer or handler members and one public member.

[48 FR 21532, May 13, 1983]

§ 967.136 Reapportionment of committee membership.

Pursuant to § 967.27(g), industry membership on the Florida Celery Committee shall be reapportioned among groups as follows:

(a) Group 1—Two members and their alternates.

(b) Group 2—Two members and their alternates.

(c) Group 3—Two members and their alternates.

(d) Group 4—Two members and their alternates.

(e) Group 5—Three members and their alternates.

[48 FR 21532, May 13, 1983]

Public Members

§ 967.140 Eligibility requirements.

(a) Public members shall be neither producers nor handlers of celery and shall have no direct financial interest in the production or marketing of celery except as consumers of agricultural products.

(b) Public members should be able to devote sufficient time and express a willingness to attend committee activities regularly and to familiarize themselves with the background and economics of the industry.

(c) Public members must be residents of Florida.

(d) Public members shall be nominated by the Florida Celery Committee and shall serve a one-year term which coincides with the term of office of producer or handler members of the committee.

[42 FR 46045, Sept. 14, 1977]

§ 967.141 Nomination procedures.

(a) Names of candidates together with evidence of qualification for public membership on the Florida Celery Committee shall be submitted to the committee at its business office, 4401 East Colonial Drive, or P.O. Box 20067, Orlando, Fla. 32814, no later than April 15.

(b) Questionnaires may be sent by the committee to those persons submitted as candidates, to determine

their eligibility and interest in becoming a public member.

(c) The names of persons nominated for the public member and alternate positions shall be submitted by the incumbent committee to the Secretary by July 1 with such information as deemed pertinent by the committee or as requested by the Secretary.

(d) Nomination of the initial public member may be made later than July 1 but as soon as practical thereafter. Such member's term shall end July 31, 1978.

[42 FR 46045, Sept. 14, 1977]

ADMINISTRATIVE RULES

§ 967.150 Marketable Allotment.

(a) Producers holding Base Quantities shall register with the committee no later than May 1 of each year, on committee forms, to indicate their intentions and commitments to produce and market celery during the forthcoming season.

(b) As provided in § 967.38(f), Marketable Allotments shall be issued only to producers who have registered by May 1.

(c) Pursuant to § 967.36(b) no handler may handle any harvested celery when a Marketable Quantity is in effect, unless it is within the Marketable Allotment of a producer who has a Base Quantity pursuant to § 967.37 and such producer authorized the first handler thereof to purchase or otherwise handle it. By October 1 of each season, each producer shall notify the committee, by certification to it on committee forms, the number of crates of harvested celery to be handled by each such handler; and if there are subsequent changes in arrangements, the committee shall similarly be notified.

[43 FR 15609, Apr. 14, 1978]

§ 967.151 Base Quantities.

(a) Pursuant to § 967.37(d)(1) a reserve of Base Quantities shall be established annually beginning with the 1978–79 season. Each annual reserve shall amount to 6 percent of the total of Base Quantities in effect for the previous season.

(1) Applicants for Base Quantities must apply to the committee for a portion of the reserve not later than April 15 each year on such forms as may be prescribed by the committee. Such forms may include, but not necessarily be limited to, details on:

(i) Individual or firm name and address.

(ii) Location and size of farming operation.

(iii) Evidence of any firm and substantial arrangements or commitments, such as contractual arrangements with credit agencies, handlers, fertilizer dealers, management agencies and others for the production and marketing of celery, including reference to land, equipment, occupation, crops produced, and past experience in farming. Applicants for increases in Base Quantity also should provide substantial evidence of a capability to produce and market additional celery including specific references to celery sales relative to Marketable Allotments, production facilities and marketing facilities.

(b) Upon receipt of the completed application forms the committee shall consider and make determinations of the allocation of annual reserve Base Quantities among eligible applicants. Up to 50 percent of the total reserve shall be allocated among new producers. Such producers shall be those applicants who have no Base Quantity under the order, and any reserve Base Quantity distributed to such applicants shall be for the purpose of establishing new production and marketing of celery. Up to 50 percent of the total reserve shall be allocated among producer applicants with existing bases. In the event total applications in either category (new producers or producers with existing bases) exceed the amount of reserve Base Quantity authorized, the reserve in each category shall be apportioned among eligible applicants on a uniform basis. Any balance of the reserve which has not been allocated during a season shall not carry forward into the following season.

(c) As provided in § 967.37, the committee may provide for informal review in open meeting of the committee, or subcommittee thereof, of appli-

cants' request for increases in Base Quantities or for Base Quantities. Such meeting shall be so conducted that an accurate record shall be made of relevant evidence presented. The record of such informal review, with references to relevant data and information presented, shall be retained by the committee and shall be subject to review by the Secretary.

(d) Each completed application form submitted to the committee shall be considered and determinations shall be made thereon. The committee shall notify each individual in writing of the action taken on the applications submitted. If the committee has not advised an individual of its decision by July 15, the individual may appeal to the Secretary for appropriate consideration thereof.

(e) To administer this part in accordance with its terms and provisons, a record of each Base Quantity and each Marketable Allotment shall be maintained by the committee.

(1) Whenever any Base Quantity or any Marketable Allotment is established for a producer, the committee shall so record and advise such producer on forms designated by it.

(2) No producer may transfer any Base Quantity or Marketable Allotment or obtain the same without first submitting a report containing all the details of the proposed transfer to the committee for record keeping and verification. Such reports shall be on forms prescribed by the committee and shall include, but not necessarily be limited to, and as applicable, Base Quantity or Marketable Allotment held, number of crates to be transferred and the specific period of time the transfer will be in effect, name and address of the producer to whom such Base Quantity or Marketable Allotment is being transferred, number of crates marketed in the representative period, qualifications as a producer and particulars on the sale and handling of the celery referable to the transferred Base Quantity or Marketable Allotment. The committee will only give consideration to requests for transfers of Base Quantity prior to the time the Marketable Quantity is recommended to the Secretary for a particular season, after which time requests for transfers of Marketable Allotments may be made to, and considered by the committee: *Provided,* That, (i) pursuant to § 967.36(b), transfers of Marketable Allotment may only be made to holders of Base Quantity; and (ii) requests for transfers of Base Quantities for any future season may be made at any time, except, pursuant to § 967.37, no Base Quantity or portion thereof issued to a new producer may be transferred within 3 years of the date of issuance.

(3) No handler may purchase harvested celery from, or handle harvested celery on behalf of, any producer, under a Base Quantity or Marketable Allotment transferred from one producer to another producer, unless such transfer was approved by the committee and recorded by it, or appropriate subcommittee, and the transferee has been so notified by the committee.

(4) No transfer of all or a portion of a Base Quantity that was originally issued by the committee to a producer in an amount greater than 37,500 crates shall (i) cause the elimination of such Base Quantity from the Marketable Quantity or from the total Base Quantities when the Uniform Percentage is calculated pursuant to § 967.38(a), nor (ii) change the applicability of such Uniform Percentage in establishing the Marketable Allotment with respect to the portion of his Base Quantity that was not transferred, regardless of whether or not such remainder exceeds 37,500 crates. The same Uniform Percentage shall also be applicable to the transferee-producer with respect to all or the portion of the transferred Base Quantity, regardless of whether or not the transferred Base Quantity or portion thereof is 37,500 crates or less, or, when added to the Base Quantity originally issued to such transferee-producer, does not aggregate more than 37,500 crates.

(f) Base Quantities not used for two consecutive seasons shall be declared invalid and cancelled if no bona fide effort is made to produce and sell celery thereunder. In determining what constitutes a "bona fide effort," the committee should require evidence of:

(1) Commitment of all resources necessary for the production and marketing of a celery crop.

(2) Registration with the committee annually, pursuant to § 967.37(f), to indicate intentions and commitments to produce and market celery.

(3) Production and sale of at least 50 percent of the producer's seasonal allotment of celery in which he has a proprietary interest, unless prevented from doing so by acts of God or other circumstances beyond his control.

[43 FR 15609, Apr. 14, 1978]

§ 967.152 Reserve for Base Quantities.

(a) Each season for which it recommends establishment of a Marketable Quantity under the provisions of § 967.36, the committee shall consider the need for a reserve for Base Quantities. Such consideration shall be directed to factors related to reserve needs, such as, but not necessarily limited to, the equitable apportionment of Base Quantities of celery among producers; and the need to meet additional demand for celery.

(b) The committee shall recommend to the Secretary, with its considerations and judgments thereon, the amount, if any, of harvested celery, in terms of crates, which should be established in a reserve for Base Quantities for the ensuing season. Such reserve may be calculated as a percentage of the total Marketable Quantity for a season or the then current Base Quantities, or shipments for a previous season or the average of shipments for two or more seasons, or on other similar basis to be determined by the committee with the Secretary's approval.

(c) The reserve, if any, for a particular season shall, for any season after the initial season, be established by the Secretary, pursuant to the committee recommendations or other available information, no later than the date of the establishment of Marketable Quantity.

(d) Applicants for Base Quantities or increases of Base Quantities, who have registered under § 967.151(a), may apply to the committee for a portion of such reserve within such time and on forms prescribed by it. The committee shall consider each application in accordance with § 967.151(b) and the amount of celery needed to meet the Marketable Quantity or revised Marketable Quantity for the season, the historical supply available, and the decline or increase in volume of celery production by other producers; and, if approved thereunder, determine the Base Quantity for each such applicant.

(e) Any balance of the reserve which has not been distributed during a current season shall not carry forward into the following season.

§ 967.155 Revised Base Quantity formula.

As soon as practicable following the May 1, 1979, registration deadline, Base Quantities for all producers of record with the Florida Celery Committee as of December 15, 1976, shall be revised to be effective for the 1979-80 season as follows and in the order enumerated:

(a) Application of the provisions of §§ 967.37(e) and 967.39 as it pertains to permanent transfers.

(b) Selection of the highest number of crates of celery produced and shipped by or for each producer during any one of the five seasons, 1974-75 through 1978-79, or his Base Quantity for the 1978-79 season, whichever is greater: *Provided however,* no producer who produced and shipped celery during each of the five seasons, 1974-75 through 1978-79, shall lose all or any portion of his Base Quantity by the application of § 967.39 pertaining to specified period of time transfers, which were approved by the committee prior to the commencement of the 1974-75 season: *And provided further,* any new producer who is issued a Base Quantity by the committee under § 967.37(d) or by transfer after December 15, 1976, shall retain his present Base Quantity.

(c) Any producer who transferred, with approval of the committee, all or a portion of his Base Quantity for a specified period of time prior to the commencement of the 1974-75 season shall have the transferred Base Quantity reissued to him upon the expiration date of such transfer.

[43 FR 57240, Dec. 7, 1978]

REPORTS AND RECORDS

§ 967.165 Reports.

(a) Pursuant to § 967.45, the following reports shall be furnished by each handler to the committee at such time and on such forms as it may request:

(1) A report of daily celery handlings broken down by number of crates, sizes, and each producer thereof.

(2) A weekly report of assessments due the committee.

(b) Pursuant to § 967.37(c), the following reports shall be furnished by producers as a condition for obtaining, holding, or transferring Base Quantities or Marketable Allotments:

(1) A weekly celery report showing acreage planted and harvested, and the number of crates harvested each day.

(2) A weekly report by each producer who marketed celery verifying the number of crates marketed and the balance of such producer's Marketable Allotment.

(3) Anticipated planting and harvesting schedule by each producer for the ensuing season, including total acres to be planted, beginning and ending dates of planting and harvesting, total production, for whom grown, and handler or handlers thereof.

(4) A report by each producer of production when done under contract giving such information as location, total acres to be planted, beginning and ending dates of planting and harvesting, handler, breakdown of proprietary interest by blocks and percent of ownership of other producers who have an interest.

(5) Pursuant to § 967.37, the committee shall be notified within a reasonable length of time by the executor, attorney, or receiver as applicable, following the death of a producer, or upon dissolution of any partnership, corporation or company which is a producer, who or which is a holder of a Base Quantity, of (i) the current status of the Base Quantity, and (ii) the final status or disposition of the Base Quantity.

[31 FR 4276, Mar. 11, 1966, as amended by Amdt. 1, 33 FR 7442, May 18, 1968]

§ 967.166 Records.

Pursuant to §§ 967.46 and 967.47, any and all applicable records and accounts of producers and handlers shall be maintained and shall be made available to a certified public accountant, as agent of the committee, for audit, if requested by the committee or its manager.

[31 FR 4276, Mar. 15, 1966]

NOTE: After January 1, 1979, "Budget of Expenses and Rate of Assessment" regulations (e.g., sections .200 through .299) and "Handling" regulations (e.g., sections .300 through .399) which are in effect for a year or less, will not be carried in the Code of Federal Regulations. FEDERAL REGISTER citations affecting these regulations, see the "List of CFR Sections Affected" in this volume.

PART 971—LETTUCE GROWN IN LOWER RIO GRANDE VALLEY IN SOUTH TEXAS

Subpart—Order Regulating Handling

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AUTHORITY: Secs. 1-19, 48 Stat. 31, as amended; 7 U.S.C. 601-674.

Subpart—Order Regulating Handling

SOURCE: 25 FR 12227, Nov. 30, 1960, unless otherwise noted. Redesignated at 26 FR 12751, Dec. 30, 1961.

DEFINITIONS

§ 971.1 Secretary.

"Secretary" means the Secretary of Agriculture of the United States, or any officer or employee of the Department to whom authority has heretofore been delegated, or to whom authority may be hereafter delegated, to act in his stead.

§ 971.2 Act.

"Act" means Public Act No. 10, 73d Congress, as amended and as re-enacted and amended by the Agricultural Marketing Agreement Act of 1937, as amended (secs. 1-19, 48 Stat. 31, as amended; 7 U.S.C. 601-674).

§ 971.3 Person.

"Person" means an individual, partnership, corporation, association or any other business unit.

§ 971.4 Production area.

"Production Area" means the counties of Cameron, Hidalgo, Starr, and Willacy, in the State of Texas.

§ 971.5 Lettuce.

"Lettuce" means all varieties of Lactuca sativa grown within the production area.

[25 FR 12227, Nov. 30, 1960. Redesignated at 26 FR 12751, Dec. 30, 1961, and amended at 45 FR 41390, June 19, 1980]

§ 971.6 Handler.

"Handler" is synonymous with "shipper" and means any person (except a common or contract carrier of lettuce owned by another person) who handles lettuce or causes lettuce to be handled.

§ 971.7 Handle.

"Handle" or "ship" means to package, sell, transport, or in any other way to place lettuce in the current of the commerce within the production area or between the production area and any point outside thereof. The sale or transportation of lettuce by the producer thereof to a person within the production area who is a registered handler is excepted from the aforesaid definition.

§ 971.8 Registered handler.

"Registered handler" means any person with adequate facilities within the production area for preparing lettuce for commercial market, who customarily does so, and who is so recorded by the committee, or any person who has access to such facilities within the production area and has recorded with the committee his ability and willingness to assume customary obligations of preparing lettuce for commercial market.

§ 971.9 Producer.

"Producer" means any person engaged in a proprietary capacity in the production of lettuce for market.

§ 971.10 Grade and size.

"Grade" means any of the established grades of lettuce and "size" means any of the established sizes of lettuce as defined and set forth in U.S. Standards for Lettuce (§§ 51.2510 to 51.2531 of this title) issued by the United States Department of Agriculture, or amendments thereto, or modifications thereof, or variations based thereon, recommended by the committee and approved by the Secretary.

§ 971.11 Pack.

"Pack" means a quantity of lettuce in any type of container and which falls within specific weight limits, numerical limits, grade limits, size limits or any combination of these, recommended by the committee and approved by the Secretary.

§ 971.12 Container.

"Container" means a carton, crate, box, bag, hamper, basket, package, or any other type of receptacle used in handling lettuce.

§ 971.13 Varieties.

"Varieties" means and includes all classifications, subdivisions, or types of lettuce according to those definitive characteristics now or hereafter recognized by the United States Department of Agriculture or recommended by the Committee, and approved by the Secretary.

§ 971.14 Committee.

"Committee" means the South Texas Lettuce Committee, established pursuant to § 971.20.

§ 971.15 Fiscal period.

"Fiscal period" means the annual period beginning and ending on such dates as may be approved by the Secretary pursuant to recommendations of the committee.

§ 971.16 Export.

"Export" means shipment of lettuce to any destination which is not within the 48 contiguous States, or the District of Columbia, of the United States.

COMMITTEE

§ 971.20 Establishment and membership.

(a) The South Texas Lettuce Committee is hereby established consisting of 12 members, including seven producers, four handlers and one public member. Each shall have an alternate who shall have the same qualifications as the member.

(b) Each committee member and alternate shall be a resident of the production area. Industry members shall be producers or handlers, or officers or employees of a producer or handler or of a producers' cooperative marketing organization. The public member shall be a person who has no financial interest in the commercial production or marketing of lettuce except as a consumer, and shall not be a director, officer or employee of any firm so engaged.

[45 FR 41390, June 19, 1980]

§ 971.21 Selection.

Committee members and alternates shall be selected by the Secretary from the production area at large. Producers and handlers, respectively, shall submit nominees to the Secretary from which members and alternates may be selected.

§ 971.22 Term of office.

(a) The term of office of committee members and their respective alternates shall be for two years and shall begin as of August 1 and end as of July 31. The term shall be so determined that about one-half of the total committee membership shall terminate each year.

(b) Committee members and alternates shall serve during the term of office for which they are selected and have qualified, or during that portion thereof beginning on the date on which they qualify during such term of office and continuing until the end thereof, and until their successors are selected and have qualified.

§ 971.23 Nominations.

Nominations for committee members and alternates may be made as follows:

(a) A meeting or meetings for election of nominees may be held for the production area at large;

(b) At each such meeting at least one nominee shall be designated for each position as member and for each position as alternate member on the committee;

(c) Nominations for committee members and alternates shall be supplied to the Secretary in such manner and form as he may prescribe not later than July 15 of each year;

(d) Only producers may participate in designating producer nominees, and only handlers may participate in naming handler nominees;

(e) Each person, whether producer or handler, is entitled to cast only one vote on behalf of himself, his agents, subsidiaries, affiliates, and representatives in designating nominees for committee members and alternates. An eligible voter's privilege of casting only one vote shall be construed to permit a voter to cast one vote for each position to be filled.

(f) The public member and alternate shall be nominated by the industry members of the committee. The committee shall prescribe such additional qualifications, administrative rules and procedure for selection and voting for each candidate as it deems necessary and as the Secretary approves.

[25 FR 12227, Nov. 30, 1960. Redesignated at 26 FR 12751, Dec. 30, 1961, and amended at 45 FR 41391, June 19, 1980]

§ 971.24 Failure to nominate.

If nominations are not made within the time and in the manner specified in § 971.23 the Secretary may, without regard to nominations, select the committee members and alternates, which selections shall be on the basis of the representation provided for in § 971.20.

§ 971.25 Acceptance.

Any person selected as a committee member or alternate shall qualify by filing a written acceptance with the Secretary within ten days after being notified of such selection.

§ 971.26 Vacancies.

To fill committee vacancies, the Secretary may select members or alternates from nominees on the current nominee list, or from nominations made in the manner specified in § 971.23. If the names of nominees to fill any such vacancy are not made available to the Secretary within 30 days after such vacancy occurs, such vacancy may be filled without regard to nominations.

§ 971.27 Alternate members.

An alternate member of the Committee shall act in place and stead of the member during such member's absence or when designated to do so. In the event both a member of the committee and that member's respective alternate are unable to attend a committee meeting, the member, alternate, or the committee, in that order, may designate another alternate from the same group (producer or handler) to serve in such member's stead. In the event of the death, removal, resignation, or disqualification of a member, the alternate shall act for the member until a successor for such

member is selected and has qualified. The committee may request the attendance of alternates at any or all meetings, notwithstanding the expected or actual presence of the respective members.

[45 FR 41391, June 19, 1980]

§ 971.28 Procedure.

(a) At assembled meetings seven members of the committee shall constitute a quorum and seven concurring votes shall be required to approve any committee action. Such votes shall be case in person.

(b) The committee may meet by telephone, telegraph, or other means of communication. The agendas of such meetings shall be limited to nonregulatory provisions and packing holidays only and any vote cast shall be promptly confirmed in writing. On such occasions nine concurring votes shall be required to approve any action.

[45 FR 41391, June 19, 1980]

§ 971.29 Expenses and compensation.

Committee members and alternates when acting on committee business shall be reimbursed for reasonable expenses necessarily incurred by them in the performance of their duties and in the exercise of their powers under this part. In addition they may receive compensation at a rate to be determined by the committee and approved by the Secretary.

§ 971.30 Powers.

The committee shall have the following powers:

(a) To administer the provisions of this part in accordance with its terms and provisions;

(b) To make rules and regulations to effectuate the terms and provisions of this part;

(c) To receive, investigate, and report to the Secretary complaints of violation of the provisions of this part; and

(d) To recommend to the Secretary amendments to this part.

§ 971.31 Duties.

It shall be, among other things, the duty of the committee:

(a) As soon as practicable after the beginning of each term of office, to meet and organize, to select a chairman and such other officers as may be necessary, to select subcommittees of committee members or alternates, to nominate the public member and alternate, to provide for consultants and their services, and to adopt such rules and regulations for the conduct of its business as it may deem advisable;

(b) To act as intermediary between the Secretary and any producer or handler;

(c) To furnish to the Secretary such available information as he may request;

(d) To appoint such employees, agents, and representatives as it may deem necessary, to determine the salaries and define the duties of each such person, and to protect the handling of committee funds through fidelity bonds;

(e) To investigate from time to time and to assemble data on the growing, harvesting, shipping, and marketing conditions with respect to lettuce;

(f) To prepare a marketing policy;

(g) To recommend marketing regulations to the Secretary;

(h) To recommend rules and procedures for, and to make determinations in connection with, issuance of Certificates of Privilege;

(i) To keep minutes, books, and records which clearly reflect all of the acts and transactions of the committee and such minutes, books, and records shall be subject to examination at any time by the Secretary or by his authorized agent or representative. Minutes of each committee meeting shall be reported promptly to the Secretary. At the end of each marketing season a statistical and historical report of operations shall be compiled and furnished to the Secretary;

(j) At the beginning of each fiscal period, to prepare a budget of its expenses for such fiscal period, together with a report thereon;

(k) To cause the books of the committee to be audited by a competent accountant at least once each fiscal period, and at such other time as the committee may deem necessary or as the Secretary may request. The report of such audit shall show the receipt

and expenditure of funds collected pursuant to this part. A copy of each such report shall be furnished to the Secretary and a copy of each such report shall be made available at the principal office of the committee for inspection by producers and handlers; and

(l) To consult, cooperate, and exchange information with other marketing order committees and other individuals or agencies in connection with all proper committee activities and objectives under this part.

[25 FR 12227, Nov. 30, 1960. Redesignated at 26 FR 12751, Dec. 30, 1961, and amended at 45 FR 41391, June 19, 1980]

Expenses and Assessments

§ 971.40 Expenses.

The committee is authorized to incur such expenses as the Secretary may find are reasonable and likely to be incurred during each fiscal period for its maintenance and functioning, and for such purposes as the Secretary, pursuant to this subpart, determines to be appropriate. Each handler's share of such expense shall be proportionate to the ratio between the total quantity of lettuce under regulation handled by him as the first handler thereof during a fiscal period and the total quantity of lettuce under regulation handled by all handlers as first handlers thereof during such fiscal period.

§ 971.41 Budget.

As soon as practicable after the beginning of each fiscal period and as may be necessary thereafter, the committee shall prepare an estimated budget of income and expenditures necessary for the administration of this part. The committee may recommend a rate of assessment calculated to provide adequate funds to defray its proposed expenditures. The committee shall present such budget to the Secretary with an accompanying report showing the basis for its calculations.

§ 971.42 Assessments.

(a) The funds to cover the committee's expenses shall be acquired by the levying of assessments upon handlers as provided in this subpart. Each handler who first handles lettuce which is regulated under this part shall pay assessments to the committee upon demand, which assessments shall be in payment of such handler's pro rata share of the committee's expenses. If a handler does not pay the assesssment within the time prescribed by the committee, the assessment may be increased by a late payment charge or an interest charge or both.

(b) Assessments, late payment charges and interest charges shall be levied upon handlers at rates established by the Secretary. Such rates may be established upon the basis of the committee's recommendations and other available information. Such rates may be applied to specified containers used in the production area.

(c) At any time during, or subsequent to, a given fiscal period the committee may recommend the approval of an amended budget and an increase in the rate of assessment. Upon the basis of such recommendations, or other available information, the Secretary may approve an amended budget and increase the rate of assessment. Such increase shall be applicable to all lettuce which was regulated under this part and which was handled by the first handler thereof during such fiscal period.

[25 FR 12227, Nov. 30, 1960. Redesignated at 26 FR 12751, Dec. 30, 1961, and amended at 45 FR 41391, June 19, 1980]

§ 971.43 Accounting.

(a) If, at the end of a fiscal period, the assessments collected are in excess of expenses incurred, such excess shall be accounted for in accordance with one of the following:

(1) If such excess is not retained in a reserve, as provided in paragraph (a)(2) of this section, it shall be refunded proportionately and to the extent practical to the persons from whom it was collected.

(2) The committee with the approval of the Secretary, may carry over such excess into subsequent fiscal periods as a reserve: *Provided,* That funds already in the reserve do not exceed approximately three fiscal periods' budgeted expenses. Such reserve funds may be used (i) to defray expenses, during

any fiscal period, prior to the time assessment income is sufficient to cover such expenses, (ii) to cover deficits incurred during any fiscal period when assessment income is less than expenses, (iii) to defray expenses incurred during any period when any or all provisions of this part are suspended or are inoperative, (iv) to cover necessary expenses of liquidation in the event of termination of this part. Upon such termination, any funds not required to defray the necessary expenses of liquidation shall be disposed of in such manner as the Secretary may determine to be appropriate.

(b) All funds received by the committee pursuant to the provisions of this part shall be used solely for the purpose specified in this part and shall be accounted for in the manner provided for in this part. The Secretary may at any time require the committee and its members to account for all receipts and disbursements.

(c) Upon the removal or expiration of the term of office of any member of the committee, such member shall account for all receipts and disbursements and deliver all property and funds in his possession to the committee, and shall execute such assignments and other instruments as may be necessary and appropriate to vest in the committee full title to all of the property, funds, and claims vested in such member pursuant to this part.

(d) The committee may make recommendations to the Secretary for one or more of the members, thereof, or any other person, to act as a trustee for holding records, funds, or any other committee property during periods of suspension of this subpart, or during any period or periods when regulations are not in effect and if the Secretary determines such action appropriate, he may direct that such person or persons shall act as trustee or trustees for the committee.

[25 FR 12227, Nov. 30, 1960. Redesignated at 26 FR 12751, Dec. 30, 1961, and amended at 45 FR 41391, June 19, 1980]

Research and Development

§ 971.48 Research and development.

The committee, with the approval of the Secretary, may establish or provide for the establishment of production research, marketing research and development projects designed to assist, improve, or promote the marketing, distribution, and consumption or efficient production of lettuce. The expenses of such projects shall be paid from funds collected pursuant to § 971.42.

[25 FR 12227, Nov. 30, 1960. Redesignated at 26 FR 12751, Dec. 30, 1961, and amended at 45 FR 41391, June 19, 1980]

Regulations

§ 971.50 Marketing policy.

(a) At the beginning of each season, and as the Secretary may require, the committee shall prepare a marketing policy statement. Such policy statement shall indicate the data on lettuce supplies and demand on which the committee bases its judgments and recommendations. It shall indicate also the kind or types of regulations contemplated during the ensuing season, and, to the extent practical, shall include recommendations for specific regulations. Notice of such marketing policy shall be given to producers, handlers, and other interested parties by bulletins, newspapers, or other appropriate media, and copies thereof shall be submitted to the Secretary and shall be available generally.

(b) Marketing policy statements relating to recommendations for regulations other than volume regulation shall give appropriate consideration to lettuce supplies for the remainder of the season, with special consideration to:

(1) Estimates of total supplies including grade, size, and quality thereof, in the production area;

(2) Estimates of supplies in competing areas;

(3) Market prices by grades, sizes, containers, and packs;

(4) Estimates of supplies of competing commodities;

(5) Anticipated marketing problems;

(6) Level and trend of consumer income; and

(7) Other relevant factors.

(c) Marketing policy statements relating to recommendations for volume

regulations shall give special consideration to:

(1) Estimates of total lettuce supplies, and the quality and condition thereof, in the production area for the immediately succeeding regulation periods;

(2) Estimates of lettuce supplies, and quality and condition thereof, in competing areas;

(3) Lettuce prices by grades, sizes, containers, and packs, to growers, to handlers, and in receiving markets;

(4) Anticipated special marketing problems; and

(5) Other relevant factors.

§ 971.51 Recommendations for regulations.

(a) Upon complying with the requirements of § 971.50, the committee may recommend regulations to the Secretary whenever it finds that such regulations as are provided for in this subpart will tend to effectuate the declared policy of the Act.

(b) At any time during a specified period for which the Secretary has fixed the quantity of lettuce which may be handled, if the committee deems such action advisable, it may recommend to the Secretary that such quantity be increased for such period. The committee's reasons therefor shall be submitted with any such recommendation.

§ 971.52 Issuance of regulations.

(a) The Secretary shall limit by regulation the handling of lettuce whenever he finds from the recommendations and information submitted by the committee, or from other available information, that such regulations would tend to effectuate the declared policy of the Act.

(b) Such regulations may:

(1) Limit in any or all portions of the production area the handling of particular grades, sizes, qualities, or packs, or any combination thereof, of any or all varieties of lettuce during any period.

(2) Limit the handling of particular grades, sizes, qualities, or packs of lettuce differently for different varieties, for different portions of the production area, for different markets, for different containers, or any combination of the foregoing, during any period.

(3) Fix the size, capacity, weight, dimensions, or pack of the container or containers used in handling lettuce.

(4) Establish holidays by prohibiting the packaging of lettuce during a specified period or periods. No regulation issued pursuant hereto shall be effective for more than 72 hours, and not less than 72 hours shall elapse between the termination of any such holiday and the beginning of the next such period.

(5)(i) Fix the total quantity of lettuce which may be handled by all handlers during any period or periods. The total quantity so fixed for handling during any period may be increased by the Secretary during such period.

(ii) Fix the proportions of each handler's allotment which he may not exceed in any one day.

(6) Limit the handling of lettuce, when parity prices have been established, by establishing and maintaining minimum standards of quality and maturity in terms of grades or sizes, or an orderly flow of lettuce supplies to market throughout its normal marketing season to avoid unreasonable fluctuations in supplies and prices, or both.

(c) Quantity regulations may be issued upon determination that the terms and provisions of § 971.53 have been met.

(d) Regulations issued hereunder may be amended, modified, suspended, or terminated whenever it is determined:

(1) That such action is warranted upon recommendation of the committee or other available information;

(2) That such action is essential to provide relief from inspection, assessment, or regulations under paragraph (b) of this section for minimum quantities less than customary commercial transactions;

(3) That regulations issued hereunder obstruct or no longer tend to effectuate the declared policy of the Act.

§ 971.53 Allocation bases and allotments.

(a) *Estimates of lettuce available for current shipment.* The committee,

with approval of the Secretary, shall establish uniform rules for estimating available supplies of lettuce, or of any grade, size, or quality thereof, during any specified period or periods. Among other appropriate requirements, such rules may provide that:

(1) Each person who has lettuce available for current shipment shall submit to the committee, at such time and in such manner as may be designated by the committee, and upon forms made available by it, a written application for an allocation base and for allotments as provided in this part;

(2) Each application shall be substantiated in such manner and shall be supported by such evidence as the committee may require, and shall include at least the name and address of the producer, or duly authorized agent, if any, for each field or portion thereof, from which lettuce is to be harvested and which is included in the quantity of lettuce available for current shipment by the applicant; an accurate description of the location of each such field or portion thereof, including the number of acres contained therein;

(3) Such application shall include only such lettuce for current shipment which the applicant controls by a bona fide written contract giving the applicant authority to handle such lettuce, or by having legal title or possession thereof, or by having executed a bona fide written agreement to purchase such lettuce;

(4) Each such application shall state the harvesting percentages for each week, or other specified allotment period, which the applicant intends to apply to particular, identified fields during such harvesting periods. Such declarations shall be pursuant to formulas established by the committee indicating the range of percentages which may be declared as available for harvest during each of the two or more weeks in which lettuce may be harvested from individual fields.

(b) *Committee verification.* The committee shall check and determine the accuracy of the information submitted pursuant to this section and shall be authorized to make a thorough investigation of any application. Whenever the committee finds an error, omission, or inaccuracy in any such information, it shall correct the same and shall give the person who submitted such report a reasonable opportunity to discuss with the committee the factors considered in making the correction.

(c) *Allocation base.* Each week during the marketing season when volume regulation is likely to be recommended, the committee shall compute the total quantity of lettuce available for current shipment by each person who has applied for an allocation base and for allotments. On the basis of such computation, the committee shall fix an allocation base for each person entitled thereto. Such allocation base shall represent the ratio between the total quantity of lettuce available for current shipment by each applicant and the total quantity of lettuce available for current shipment by all such applicants for allocation bases. The committee shall notify the Secretary of the allocation base fixed for each person and shall notify each such person of the allocation base fixed for him.

(d) *Allotments.* (1) Whenever the Secretary has fixed the quantity of lettuce which may be handled during any week, the committee shall calculate the quantity of lettuce which may be handled by each such person during such week. The said quantity shall be the allotment of such person and shall be in an amount equivalent to the product of the allocation base of such person and the total quantity of lettuce fixed by the Secretary as the total quantity of lettuce which may be handled during such week. The committee shall give reasonable notice to each person of the allotment computed for him pursuant to this part.

(2) The committee, with approval of the Secretary, shall establish uniform rules to the end that handlers' allotments will be apportioned equitably among producers thereof.

(e) *Verification of compliance with allotments.* Fields or blocks of lettuce included in applications for allocation bases and allotments shall be checked from time to time, as deemed necessary by the committee, to determine compliance with allotments. Checking

procedures, methods for establishing committee determinations, means for notifying handlers and other persons of the extent to which allotments on specific fields or blocks have been used, and provision for issuance of certificates of compliance with allotments shall be in accordance with rules recommended by the committee and approved by the Secretary. Such rules may also provide that a handler shall not package or sell lettuce from a field or fields on which allotments applicable to the available supply estimated therefor have been exhausted unless regulations in effect under § 971.52(b)(5) are suspended or terminated.

(f) *Adjustment of allotments.* The committee may, pursuant to rules and regulations recommended by the committee and approved by the Secretary, provide for transferring or adjusting allotments during any allotment period. Such adjustments may be based upon factors such as weather, changes in maturity, condition, harvestability, changes in ownership or control of such lettuce, or other factors affecting the supplies of lettuce available for current shipment.

(g) *Assignment of allotments.* In connection with all shipments of lettuce other than shipments by rail car, the committee may require, pursuant to rules approved by the Secretary, that each such shipment shall be accompanied by an assignment of allotment covering such shipment provided by the first handler thereof. Such rules shall provide for appropriate forms, methods and manner of issuance thereof, and information to be required in connection therewith.

§ 971.54 Handling for special purposes.

Regulations in effect pursuant to § 971.42, § 971.52, or § 971.60 may be modified, suspended, or terminated by the Secretary, upon recommendation of the committee, to facilitate handling of lettuce for: (a) Relief or charity; (b) experimental purposes; (c) exports; and (d) other special purposes.

§ 971.55 Safeguards.

The committee, with the approval of the Secretary, may establish through rules the requirements with respect to proof that shipments made pursuant to § 971.54 were handled and used for the purpose stated.

§ 971.56 Notification of regulation.

The Secretary shall promptly notify the committee of regulations issued or of any modification, suspension, or termination thereof. The committee may give additional notice thereof to handlers.

INSPECTION

§ 971.60 Inspection and certification.

(a) Whenever the handling of lettuce is regulated pursuant to § 971.52 or at other times when recommended by the committee and approved by the Secretary, no handler shall handle lettuce unless it is inspected by an authorized representative of the Federal-State Inspection Service and it is covered by a valid inspection certificate, except when relieved from such requirements pursuant to § 971.52(d) or § 971.54, or paragraph (b) of this section.

(b) Regarding, resorting, repacking any lot of lettuce, or breaking any lot (without continuing identification of applicable inspection or sub-certification thereof), shall invalidate any prior inspection certificate insofar as the requirements of this section are concerned. No handler shall handle lettuce after a lot has been broken, regraded, repacked or resorted, or in any other way additionally prepared for market, unless such lettuce is inspected by an authorized representative of the Federal or Federal-State Inspection Service. Such inspection requirements on regraded, resorted, repacked, or broken lots of lettuce may be modified, suspended or terminated upon recommendation by the committee, and approval of the Secretary.

(c) Upon recommendation of the committee and approval by the Secretary, any or all lettuce so inspected and certified shall be identified by appropriate seals, stamps, or tags, to be affixed to the containers by the handler under the direction and supervision of a Federal or Federal-State inspector or the committee.

(d) Insofar as the requirements of this section are concerned, the length

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of time for which an inspection certificate is valid may be established by the committee with the approval of the Secretary.

(e) When lettuce is inspected in accordance with the requirements of this section, a copy of each inspection certificate issued shall be made available to the committee by the inspection service.

(f) The committee may recommend and the Secretary may require that no handler shall transport or cause the transportation of lettuce by motor vehicle or by other means unless such shipment is accompanied by a copy of the inspection certificate issued thereon, or other document authorized by the committee to indicate that such inspection has been performed. Such certificate or document shall be surrendered to such authority as may be designated.

Reports

§ 971.80 Reports.

Upon request of the committee, made with the approval of the Secretary, handlers shall furnish to the committee, in such manner and at such time as it may prescribe, such reports and other information as may be necessary for the committee to perform its duties under this part. Where necessary for determining compliance with regulations, the committee may request reports from individual handlers with respect to specific sales, transportation, or other handling of lettuce.

(a) Such reports may include, but are not necessarily limited to, the following:

(1) Fields or blocks of lettuce owned or controlled by applicants for allotments; (2) the quantities of lettuce harvested, packed, or otherwise handled by a handler; (3) quantities of lettuce harvested from particular fields or blocks thereof, with dates of harvest; (4) the quantities disposed of by a handler segregated as to the respective quantities subject to particular regulations and not subject to regulation; (5) the date of each such disposition and the identification of the carrier transporting such lettuce; and (6) identification of the inspection certificates relating to the lettuce which was handled pursuant to §§ 971.52 and 971.54.

(b) All such reports shall be held under appropriate protective classification and custody by the committee, or duly appointed employee thereof, so that the information contained therein which may adversely affect the competitive position of any handler in relation to other handlers will not be disclosed. Compilations of general reports from data submitted by handlers is authorized, subject to the prohibition of disclosure of individual handlers' identities or operations.

(c) Each handler shall maintain for at least two succeeding years such records of the lettuce received, and of lettuce disposed of, by such handler as may be necessary to verify the reports he submits to the committee pursuant to this section.

Compliance

§ 971.81 Compliance.

Except as provided in this subpart, no handler shall handle lettuce, the handling of which has been prohibited by the Secretary in accordance with provisions of this subpart, or the rules and regulations thereunder, and no handler shall handle lettuce except in conformity to the provisions of this subpart.

Miscellaneous Provisions

§ 971.82 Right of the Secretary.

The members of the committee (including successors and alternates), and any agent or employee appointed or employed by the committee shall be subject to removal or suspension by the Secretary at any time. Each and every order, regulation, decision, determination or other act of the committee shall be subject to the continuing right of the Secretary to disapprove of the same at any time. Upon such disapproval, the disapproved action of the said committee shall be deemed null and void, except as to acts done in reliance thereon or in compliance therewith prior to such disapproval by the Secretary.

§ 971.83 Effective time.

The provisions of this subpart, or any amendment thereto, shall become effective at such time as the Secretary may declare and shall continue in force until terminated in one of the ways specified in this subpart.

§ 971.84 Termination.

(a) The Secretary may, at any time, terminate the provisions of this subpart by giving at least one day's notice by means of a press release or in any other manner which he may determine.

(b) The Secretary may terminate or suspend the operation of any or all of the provisions of this subpart whenever he finds that such provisions do not tend to effectuate the declared policy of the act.

(c) The Secretary shall terminate the provisions of this subpart at the end of any fiscal period whenever he finds that such termination is favored by a majority of producers who, during a representative period, have been engaged in the production of lettuce for market: *Provided*, That such majority has, during such representative period, produced for market more than fifty percent of the volume of such lettuce produced for market.

(d) The provisions of this subpart shall, in any event, terminate whenever the provisions of the act authorizing them cease to be in effect.

§ 971.85 Proceeding after termination.

(a) Upon the termination of the provisions of this subpart the then functioning members of the committee shall continue as joint trustees for the purpose of settling the affairs of the committee by liquidating all funds and property then in the possession of or under control of the committee, including claims for any funds unpaid or property not delivered at the time of such termination. Action by said trusteeship shall require the concurrence of a majority of the said trustees.

(b) The said trustees shall continue in such capacity until discharged by the Secretary; shall, from time to time, account for all receipts and disbursements and deliver all property on hand, together with all books and records of the committee and of the trustees, to such person as the Secretary may direct; and shall, upon request of the Secretary, execute such assignments or other instruments necessary or appropriate to vest in such persons full title and right to all of the funds, property, and claims vested in the committee or the trustees pursuant to this subpart.

(c) Any person to whom funds, property, or claims have been transferred or delivered by the committee or its members, pursuant to this section, shall be subject to the same obligations imposed upon the members of the committee and upon the said trustees.

§ 971.86 Effect of termination or amendments.

Unless otherwise expressly provided by the Secretary, the termination of this subpart or of any regulation issued pursuant to this subpart, or the issuance of any amendments to either thereof, shall not (a) affect or waive any right, duty, obligation, or liability which shall have arisen or which may thereafter arise in connection with any provision of this subpart or any regulation issued under this subpart, or (b) release or extinguish any violation of this subpart or of any regulation issued under this subpart, or (c) affect or impair any rights or remedies of the Secretary or of any other person with respect to any such violation.

§ 971.87 Duration of immunities.

The benefits, privileges, and immunities conferred upon any person by virtue of this subpart shall cease upon the termination of this subpart, except with respect to acts done under and during the existence of this subpart.

§ 971.88 Agents.

The Secretary may, by designation in writing, name any person, including any officer or employee of the United States Department of Agriculture, to act as his agent or representative in connection with any of the provisions of this subpart.

§ 971.89 Derogation.

Nothing contained in this subpart is, or shall be construed to be, in derogation or in modification of the rights of the Secretary or of the United States to exercise any powers granted by the act or otherwise, or, in accordance with such powers, to act in the premises whenever such action is deemed advisable.

§ 971.90 Personal liability.

No member or alternate of the committee nor any employee or agent thereof, shall be held personally responsible, either individually or jointly with others, in any way whatsoever, to any handler or to any person for errors in judgment, mistakes, or other acts, either of commission or omission, as such member, alternate, agent, or employee, except for acts of dishonesty, willful misconduct or gross negligence.

§ 971.91 Separability.

If any provision of this subpart is declared invalid, or the applicability thereof to any person, circumstance, or thing is held invalid, the validity of the remainder of this subpart, or the applicability thereof to any other person, circumstance, or thing shall not be affected thereby.

§ 971.92 Amendments.

Amendments to this subpart may be proposed, from time to time, by the committee or by the Secretary.

Subpart—Rules and Regulations

SOURCE: 26 FR 123, Jan. 7, 1961, unless otherwise noted. Redesignated at 26 FR 12751, Dec. 30, 1961.

GENERAL

§ 971.100 Order.

Order means Order No. 971 (§§ 971.1 to 971.92) regulating the handling of lettuce grown in the Lower Rio Grande Valley in South Texas.

§ 971.101 Terms.

The terms used in this subpart shall have the same meaning as when used in the order.

§ 971.102 Communications.

Unless otherwise provided in the order, or by specific direction of the committee, all reports, applications, submittals, requests and communications in connection with the order shall be addressed to the South Texas Lettuce Committee, at its principal office.

§ 971.103 Fiscal period.

The fiscal period which extends from November 1, 1962, through October 31, 1963 (7 CFR 971.103), shall end July 31, 1963. Beginning August 1, 1963, and thereafter, the fiscal period shall begin August 1 of each year and end July 31 of the following year, both dates inclusive.

[29 FR 1445, Jan. 29, 1964]

§ 971.104 Registered handler.

For purposes of this part any person who operates as an established lettuce handler within the production area, with commonly accepted adequate facilities for grading and packing lettuce for market and who customarily buys lettuce from producers for packing and marketing, shall be recorded by the committee as a registered handler. Any other person who wishes to be listed as a registered handler may make application for registration on forms furnished by the committee. If such applicant has facilities available to him that are determined by the committee to be adequate for grading and packing lettuce for market, and he assumes responsibility for inspection of lettuce handled by him, and for assessments thereon, he may be approved and recorded as a registered handler. If the committee determines from the available information that the applicant is not entitled to be registered with the committee, he shall be so informed by written notice stating the reason for denial of his application. Any registration of a handler pursuant to this section may be canceled by the committee under circumstances which would have justified denial of his application. Any handler whose registration has been canceled shall be so informed by written notice thereof stating the reason therefor. The committee shall also notify pro-

ducers of each such cancellation of handler registration through committee bulletins or published notice in local newspapers of general distribution, or both.

Estimates and Allotments

§ 971.110 Estimates of lettuce for current shipment.

(a) *Administrative policy.* Prior to, or at the beginning, of each lettuce marketing season the committee shall consider whether volumes regulations are probable during the ensuing season. If, after consideration of all factors bearing on the marketing of lettuce during the ensuing season, volume regulations are deemed sufficiently probable to warrant preparation therefor, the committee shall so announce to producers, handlers, and the public. Announcements shall indicate the preparatory work necessarily required of lettuce producers and handlers for estimates of lettuce available for current shipment during any ensuing allotment periods. The committee shall specify the dates on which fields or blocks of lettuce shall be recorded with the committee, and the dates on which it will begin estimating lettuce available for current shipment in ensuing allotment periods. The committee shall provide forms for recording fields or blocks of lettuce by producers and handlers and for use in applying for allocation bases and allotments.

(b) *Application for allocation bases and allotments.* Each season, on the date established by the committee for the initial allotment period and thereafter on the date established for each succeeding allotment period, each person who has lettuce available for current shipment shall submit, at the time, place, and manner prescribed by the committee, and on forms provided by the committee, an application for an allocation base and allotments on specific fields or blocks of lettuce declared by such person as available for current shipment. Applications shall contain information essential to the committee for estimating current supplies available for shipment by the applicant during the allotment periods set forth in the application, and to the extent applicable, shall include the following:

(1) Name and address of the applicant

(2) Names and addresses of producers of lettuce included in the application

(3) Agent or handler

(4) Proof of ownership or other authority supporting the application

(5) Identification, location, and description of fields or blocks

(6) Net acres in the respective fields or blocks

(7) Harvest period

(8) Intended harvesting percentage for each week

(9) Signature of applicant.

§ 971.111 Apportionment of allotments.

(a) Pursuant to computations made in accordance with § 971.53(d)(1), the committee shall notify each applicant of (1) his total allotment, (2) the amount thereof based on lettuce produced by the applicant and (3) (if applicable) the amount thereof based on lettuce produced by each of the other producers named in the application.

(b) Each handler with an allotment which is made up in whole or in part of lettuce produced by others shall notify each of the other participating producers, in the manner and at the time prescribed by the committee, of his equitable portion of the allotment.

(c) When handlers are limited by weekly volume regulations, or in the proportion of their weekly allotment which may not be exceeded in any one day, each handler with allotted lettuce owned or controlled by other persons shall equitably apportion such allotment among each of the other persons whose lettuce is included in the estimates on which the allotment is based. In carrying out the equitable apportionment of such weekly allotments, handlers may give consideration to the following factors: (1) Weather conditions, or other similar acts beyond control of the producers or the handler and their effect on the growth, maturity, and harvestability of each producer's lettuce; (2) reasonable management of harvesting and packing operations; (3) practical and economical distribution and assignment of har-

vesting and packing crews in the mutual interests of producers and handlers; (4) customary management and marketing practices under similar conditions in the absence of regulations; and (5) other factors contributing to mutually satisfactory producer-handler relationships in the marketing of lettuce.

§ 971.112 Compliance verification.

(a) Each week during allotment periods, the committee shall investigate, or cause to be investigated, each handler's performance in harvesting fields or blocks of lettuce included within their applications and on which allotments have been established. Such checks and investigations shall report (1) compliance with allotments, (2) the extent to which allotments applicable to specific fields have been used, and (3) include fields on which allotments no longer apply. From time to time the committee shall inform handlers of the status of their allotments with respect to specific fields and of the dates on which allotments for specific fields shall terminate.

(b) Upon packaging, selling, or otherwise handling all lettuce allotted for shipment from a specific field, no person shall package or sell lettuce from such field, unless regulations under § 971.52(b)(5) are suspended or terminated.

§ 971.113 Adjustment of allotments.

Allocation bases and allotments may be transferred or adjusted under the conditions set forth below. However, no adjustments or transfers of allotments may be made by the committee in excess of the allocation base and allotment of the respective handler, or which will result in allotments in excess of that specified for any allotment period or any day therein.

(a) When a person with an allocation base and an allotment sells or otherwise disposes of unharvested lettuce included therein to any other person, the allocation base and allotment therefor shall be transferred to such person. Such transfers shall be based on a bona fide contract transferring ownership or control of such lettuce. The committee shall maintain a record of all such transfers.

(b)(1) Any person with an allocation base and an allotment may request the committee, within such time as may be prescribed by the committee, for a reappraisal of his fields and the estimates of his available lettuce supplies to determine whether changes due to weather, maturity, harvestability, quality, or condition of the lettuce warrant an adjustment of his allotment. Upon investigation and report thereon, the committee shall determine the action to be taken on the request. In addition to other findings that may be made, such report shall indicate changes, if any, in harvesting percentages or yields that may properly be made in such applicant's estimates of supplies for current shipment.

(2) When the committee receives reports, properly verified by it, that lettuce in an applicant's allotment will not be used, such allotment shall be adjusted accordingly. The allotment thus released shall be made available equitably by the committee to other applicants who have requested an increase in their allotment.

(c) The committee shall maintain daily and weekly records setting forth a full disclosure of all transfers and adjustments of allocation bases and allotments. Reports thereon may be requested by the Secretary at any time.

§ 971.114 Reports.

(a) During any allotment period, each handler shall report, or cause to be reported, the amount of lettuce packaged or otherwise handled by him from fields or blocks of lettuce on which his allotments were based or from any other source. Such reports may be provided by cooling plants or other commonly accepted sources from which such information is available.

(b) Persons selling or transporting lettuce for export to Mexico may be required to report all handling thereof, with identification of amounts of lettuce, date, vehicle, and fields from which such lettuce was harvested.

SAFEGUARDS

§ 971.120 Policy.

Whenever shipments of lettuce for special purposes pursuant to § 971.54 are relieved in whole or in part from regulations issued under §§ 971.52 and 971.53, the committee may require information and evidence on the manner, methods, and timing of such shipments as safeguards against the entry of any such lettuce in trade channels other than those for which intended. Such information and evidence shall include requirements set forth below with respect to Certificates of Privilege.

§ 971.121 Qualification.

Before handling lettuce for special purposes which do not meet regulations issued pursuant to §§ 971.52 and 971.53, a handler, when required by such regulations, must qualify with the committee to handle shipments for special purposes. To qualify he must (a) apply for and receive a Certificate of Privilege indicating his intent to so handle lettuce, (b) agree to comply with reporting and other requirements set forth in §§ 971.120 to 971.125, inclusive, with respect to such shipments, and (c) receive approval of the committee, or its duly authorized agents, to so handle lettuce. Such approval will be based upon evidence furnished in his application for Certificate of Privilege and other information available to the committee.

§ 971.122 Application.

(a) Applications for a Certificate of Privilege shall be made on forms furnished by the committee. Each application may contain, but need not be limited to, the name and address of the handler; the quantity by grade, size, and quality of the lettuce to be shipped; the mode of transportation; the consignee; the destination; the purpose for which the lettuce is to be used; and certification to the United States Department of Agriculture and to the committee as to the truthfulness of the information shown thereon, and any other appropriate information or documents deemed necessary by the committee or its duly authorized agents for the purposes stated in § 971.120.

(b) The committee may require each handler making shipments of lettuce for export to include with his application a copy of the Department of Commerce Shippers Export Declaration Form No. 7525-V applicable to such shipment.

§ 971.123 Approval.

The committee or its duly authorized agents shall give prompt consideration to each application for a Certificate of Privilege. Approval of an application, based upon the determination as to whether the information contained therein and other information available to the committee supports approval, shall be evidenced by the issuance of a Certificate of Privilege to the applicant. Each certificate shall cover a specified period and specified qualities and quantities of lettuce to be sold or transported to a designated consignee for the purposes declared.

§ 971.124 Reports.

Each handler of lettuce shipping under Certificates of Privilege shall supply the committee with reports as requested by the committee, or its duly authorized agents, showing the name and address of the shipper; the car or truck identification; the loading point, destination; consignee; the inspection certificate number when inspection is required; and any other information deemed necessary by the committee.

§ 971.125 Disqualification.

The committee from time to time may conduct surveys of handling of lettuce for special purposes requiring Certificates of Privilege to determine whether handlers are complying with the requirements and regulations applicable to such certificates. Whenever the committee finds that the handler or consignee is failing to comply with requirements and regulations applicable to handling of lettuce in special outlets and requiring such certificates, a Certificate or Certificates of Privilege issued such handler may be rescinded and subsequent certificates denied. Such disqualification shall

apply to, and not exceed, a reasonable period of time as determined by the committee, but in no event shall it extend beyond the date of the succeeding fiscal period. Any handler who has a Certificate rescinded or denied may appeal to the committee in writing for reconsideration of his disqualification.

NOTE: After January 1, 1979, "Budget of Expenses and Rate of Assessment" regulations (e.g. sections .200 through .299) and "Handling" regulations (e.g. sections .300 through .399) which are in effect for a year or less, will not be carried in the Code of Federal Regulations. For FEDERAL REGISTER citations affecting these regulations, see the "List of CFR Sections Affected" in this volume.

PART 979—MELONS GROWN IN SOUTH TEXAS

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AUTHORITY: Secs. 1-19, 48 Stat. 31, as amended; 7 U.S.C. 601-674.

SOURCE: 44 FR 22038, Apr. 13, 1979, unless otherwise noted.

Subpart—Order Regulating Handling

DEFINITIONS

§ 979.1 Secretary.

"Secretary" means the Secretary of Agriculture of the United States, or any other officer or employee of the Department of Agriculture to whom authority has heretofore been delegated, or to whom authority may hereafter be delegated, to act in his stead.

§ 979.2 Act.

"Act" means Public Act No. 10, 73d Congress (May 12, 1933), as amended and as reenacted and amended by the Agricultural Marketing Agreement Act of 1937, as amended (Secs. 1-19, 48 Stat. 31, as amended; 7 U.S.C. 601-674).

§ 979.3 Person.

"Person" means an individual, partnership, corporation, association, or any other business unit.

§ 979.4 Production area.

"Production area" means the counties of Bee, Brooks, Cameron, Duval, Hidalgo, Jim Hogg, Jim Wells, Kenedy, Kleberg, La Salle, Live Oak, McMullen, Nueces, Refugio, San Patricio, Starr, Webb, Willacy, and Zapata in the State of Texas.

§ 979.5 Melons

"Melons" means all varieties of *Cucumis melo*, commonly called muskmelons and including but not limited to varieties *reticulatus* and *inodorus*, grown in the production area. Such varieties include cantaloupes, honeydew and honey ball melons. Watermelons (*Citrullus lanatus*) are not included in the foregoing definition.

§ 979.6 Handler.

"Handler" is synonymous with "shipper" and means any person (except a common or contract carrier of melons owned by another person) who handles melons or causes melons to be handled.

§ 979.7 Handle.

"Handle" or "ship" means to harvest, grade, package, sell, transport, or in any other way to place melons grown in the production area, or cause such melons to be placed, in the current of commerce within the production area or between the production area and any point outside thereof. Such term shall not include the transportation, sale, or delivery within the production area of field-run melons to a person for the purpose of having such melons prepared for market.

§ 979.8 Grower.

"Grower" is synonymous with "producer" and means any person engaged in a proprietary capacity in the production of melons for market.

§ 979.9 Committee.

"Committee" means the South Texas Melon Committee established pursuant to § 979.22.

§ 979.10 Fiscal period.

"Fiscal period" means the annual period beginning and ending on such dates as may be approved by the Secretary pursuant to recommendations of the committee.

§ 979.11 Grade, size, and maturity.

"Grade," "size," and "maturity" mean, respectively, any of the officially established grade, size, or maturity definitions as set forth in the U.S. Standards for Grades of Cantaloupes (§§ 2851.475-2851.494(c) of this title) or U.S. Standards for Grades of Honey Dew and Honey Ball Type Melons (§§ 2851.3740-2851.3749 of this title), including amendments, modifications, or variations thereof, or, such other grades, sizes, and maturities as may be recommended by the committee and approved by the Secretary.

§ 979.12 Grading.

"Grading" is synonymous with "preparing melons for commercial market" and means sorting or separation of melons into grades, sizes, maturities, or packs or any combination thereof, for handling.

§ 979.13 Pack.

"Pack" means a quantity of melons specified by grade, size, weight, or count, or by type or conditions of container, or any combination of these recommended by the committee and approved by the Secretary.

§ 979.14 Container.

"Container" means any carton, crate, box, bag, hamper, pallet bin, package, basket, bulk load, or any other type of receptacle used in handling melons.

§ 979.15 Varieties.

"Varieties" means and includes all classifications, subdivisions, or types or melons according to those definitive characteristics now and hereinafter recognized by the U.S. Department of Agriculture or recommended by the committee, and approved by the Secretary.

§ 979.16 Export.

"Export" means shipment of melons to any destination which is not within the 48 contiguous States, or the District of Columbia, of the United States.

§ 979.17 District.

"District" means each of the geographic divisions of the production area initially established pursuant to § 979.24 or as reestablished pursuant to § 979.25.

§ 979.18 Part and subpart.

"Part" means the Order Regulating the handling of Melons Grown in South Texas and all rules and regulations and supplementary orders issued thereunder. The aforesaid Order Regulating the Handling of Melons Grown in South Texas shall be a "subpart" of such "part."

COMMITTEE

§ 979.22 Establishment and membership.

(a) There is hereby established a South Texas Melon Committee, consisting of ten (10) members, to administer the terms and provisions of this part. Six members shall be growers, three members shall be handlers, and one shall be a public member. Each shall have an alternate who shall have the same qualifications as the member.

(b) Each member, other than the public member, shall be an individual who is, prior to his selection and during his term of office (1) a resident of the production area, and (2) a grower or handler, or an officer or employee of a grower or handler, or of growers' cooperative marketing organization.

(c) Five members shall be growers from District No. 1 and one member shall be a grower from District No. 2. No person, if he handles melons, shall be eligible for selection as a grower member on the committee unless all of the melons handled by him during the fiscal period immediately preceding his proposed selection to the committee were his own production or unless such person is an officer or employee of a growers' cooperative marketing association. Three members shall be handlers from District No. 1.

(d) The public member and alternate shall be a resident of the production area and be neither a grower nor a handler and shall have no direct financial interest in the commercial production, financing, buying, packing or marketing of melons, except as a consumer, nor shall such person be a director, officer or employee of any firm so engaged.

§ 979.23 Term of office.

(a) Except as otherwise provided in paragraph (b) of this section, the term of office of committee members and their respective alternates shall be for two years and shall begin as of March 1 and end the last day of February or for such other two year period as the committee may recommend and the Secretary approve. The terms shall be so determined that approximately one-half of the total committee membership shall terminate each year. Members and alternates shall serve in such capacity for the portion of the term of office for which they are selected and have qualified, and until their respective successors are selected and have qualified;

(b) The term of office of the initial members and alternates shall begin on the effective date of this subpart. Approximately one-half the initial committee members and alternates shall serve for a 1 year term.

§ 979.24 Districts.

To determine a basis for selecting committee members, the following districts of the production area are hereby initially established:

District No. 1: (Valley) the counties of Cameron, Hidalgo, Starr, Brooks, Kleberg, Jim Hogg, Kenedy, and Willacy in the State of Texas.

District No. 2: (Laredo-Coastal Bend) the counties of Zapata, Webb, Duval, Jim Wells, Nueces, San Patricio, La Salle, McMullen, Live Oak, Bee, and Refugio in the State of Texas.

§ 979.25 Redistricting.

The committee may recommend, and the Secretary may approve, the reapportionment of members among districts, and the reestablishment of districts within the production area. In recommending any such changes, the committee shall give consideration to:

(a) Shifts in melon acreage within the districts and within the production area during recent years;

(b) The importance of new production in its relation to existing districts;

(c) The equitable relationship of committee membership and districts; and

(d) Other relevant factors. No change in districting or in apportionment of members within districts may become effective less than 30 days prior to the date on which terms of office begin each year and no recommendations for such redistricting or reapportionment may be made less than 6 months prior to such date.

§ 979.26 Nominations.

(a) Initial members. For nominations to the initial committee, the meeting or meetings may be sponsored by the U.S. Department of Agriculture or by any agency or group requested to do so by the Department. The nominations, resulting from these meetings, for each of the six initial grower and three initial handler members of the committee, together with nomination for the initial alternate members for each position shall be submitted to the Secretary prior to the effective date of this subpart.

(b) Successor members. (1) The committee shall hold or cause to be held not later than January 15 of each year, or such other date as may be specified by the Secretary, a meeting or meetings of growers and handlers in each district for the purpose of designating at least one nominee for each position as member and for each position as alternate member of the committee which is vacant, or which is about to become vacant;

(2) The names of nominees shall be supplied to the Secretary at such time and in such manner and form as he may prescribe;

(3) Only growers may participate in designating grower nominees and only handlers may participate in designating handler nominees to the committee;

(4) Only growers and handlers who are present at such nomination meetings, or represented at such meetings by a duly authorized employee, may participate in the nomination and election of nominees for members and their alternates.

(c) Each person, whether grower or handler, is entitled to cast only one vote on behalf of himself, his agents, subsidiaries, affiliates, and representatives in designating nominees for committee members and alternates. An eligible voter's privilege of casting only one vote shall be construed to permit a voter to cast one vote for each position to be filled;

(d) The public member and alternate member shall be nominated by the members of the committee. The public member and alternate member shall not be growers or handlers, or employees of growers or handlers. The committee shall recommend rules for receiving names of persons to be considered for nomination to the public member and alternate positions. Rules shall also be recommended for establishing eligibility of persons nominated to the public member and alternate positions. The persons nominated for the public member and alternate positions shall be submitted by the incum-

bent committee to the Secretary by January 15, or such other date recommended by the committee and approved by the Secretary, of the years the terms expire together with information deemed pertinent by the committee or as requested by the Secretary. The names of the nominees for the initial public member and alternate shall be submitted to the Secretary not later than 90 days after the first regular meeting of the initial South Texas Melon Committee.

§ 979.27 Selection.

Committee members and alternates shall be selected by the Secretary on the basis of representation provided for in § 979.22 from nominations made pursuant to § 979.26.

§ 979.28 Failure to nominate.

If nominations, including initial nominations, are not made within the time and manner prescribed in § 979.26, the Secretary may, without regard to nominations, select the members and alternates on the basis of the representation provided for in § 979.22.

§ 979.29 Acceptance.

Any person selected by the Secretary as member or as an alternate member of the committee shall, prior to serving as such, qualify by filing a written acceptance with the Secretary within the time period specified by the Secretary.

§ 979.30 Vacancies.

To fill committee vacancies, the Secretary may select members or alternates from nominees on the latest nomination reports or from nominations made in the manner specified in § 979.26 or from other eligible persons. If the names of nominees to fill any such vacancy are not made available to the Secretary within 30 days after such vacancy occurs, the vacancy may be filled without regard to nomination, but such selection shall be made on the basis of representation provided for in § 979.22.

§ 979.31 Alternate member.

An alternate member of the committee shall act in the place and stead of the member for whom he is an alternate, during such member's absence or when designated to do so by such member. In the event both a member of the committee and his alternate are unable to attend a committee meeting, the member or his alternate or the committee, in that order, may designate another alternate from the same district and the same group (handler or grower) to serve in such member's stead. In the event of the death, removal, resignation, or disqualification of a member, his alternate shall act for him until a successor of such member is selected and has qualified. The committee may request the attendance of alternates at any or all meetings, notwithstanding the expected or actual presence of the respective members.

§ 979.32 Procedure.

(a) Seven members of the committee shall be necessary to constitute a quorum and the same number of concurring votes shall be required to pass any motion or approve any committee actions.

(b) In assembled meetings all votes shall be cast in person. However, the committee may provide for meetings by telephone, telegraph, or other means of communication and any vote cast at such meetings shall be promptly confirmed in writing and recorded in the minutes of each meeting so as to reflect how each member voted.

§ 979.33 Expenses.

Members and alternates, when serving as members of the committee, shall serve without compensation but shall be reimbursed for such expenses authorized by the committee and necessarily incurred by them in attending committee meetings and in the performance of their duties under this part: *Provided*, That the committee at its discretion may request the attendance of one or more alternates at any or all meetings notwithstanding the expected or actual presence of the respective members and may pay expenses as aforesaid.

§ 979.34 Powers.

The committee shall have the following powers:

(a) To administer the provisions of this part in accordance with its terms;

(b) To make rules and regulations to effectuate the terms and provisions of this part;

(c) To receive, investigate, and report to the Secretary complaints of violation of the provisions of this part; and

(d) To recommend to the Secretary amendments to this part.

§ 979.35 Duties.

The committee shall have, among others, the following duties:

(a) As soon as practicable after the beginning of each term of office, to meet and organize, to select a chairman and such other officers as may be necessary, to select subcommittees, and to adopt such rules, regulations, and bylaws for the conduct of its business as it deems necessary, and to recommend nominees for the public member and alternate;

(b) To act as intermediary between the Secretary and any grower or handler;

(c) To furnish to the Secretary such available information as he may request;

(d) To appoint such employees, agents, and representatives as it may deem necessary, to determine the compensation and define the duties of each such person, and to protect the handling of committee funds through fidelity bonds;

(e) To investigate from time to time and to assemble data on the growing, harvesting, shipping, and marketing conditions with respect to melons;

(f) To recommend research projects to the Secretary in accordance with this part;

(g) To notify handlers of each meeting of the committee to consider recommendations for regulations and of all regulatory actions taken which might affect growers or handlers and to provide such notification to producers through appropriate news releases or such other means as may be available to the committee;

(h) To give the Secretary the same notice of meetings of the committee and its subcommittee as is given to its members;

(i) To prepare a marketing policy;

(j) To recommend marketing regulations to the Secretary;

(k) To recommend rules and procedures for, and to make determination in connection with appropriate safeguards;

(l) To keep minutes, books, and records which clearly reflect all of the acts and transactions of the committee and such minutes, books, and records shall be subject to examination at any time by the Secretary or his authorized agent or representative. Minutes of each committee meeting shall be reported promptly to the Secretary;

(m) Prior to or at the beginning of each fiscal period, to prepare a budget of anticipated expenses for such fiscal period, together with a report thereon;

(n) To prepare periodic statements of the financial operations of the committee and to make copies of each such statement available to producers and handlers for examination at the office of the committee;

(o) To prepare and forward to the Secretary, prior to the last day of each fiscal period, an annual report, and make a copy available to each handler and grower who requests it. This annual report shall contain at least:

(1) A complete review of the regulatory operations during the fiscal period;

(2) An appraisal of the effect of such regulatory operations upon the melon industry; and

(3) Any recommendations for changes in the program.

(p) To cause the books of the committee to be audited by a competent accountant at least once each fiscal period and at such other times as the committee may deem necessary or as the Secretary may request. The report of such audit shall show the receipt and expenditure of funds collected pursuant to this part. Two copies of such report shall be furnished to the Secretary and a copy of each such report shall be made available at the principal office of the committee for inspection by growers and handlers; and

(q) To consult, cooperate, and exchange information with other mar-

keting order committees and other individuals or agencies in connection with all proper activities and objectives under this part.

EXPENSES AND ASSESSMENTS

§ 979.40 Expenses.

The committee is authorized to incur such expenses as the Secretary finds are reasonable and likely to be incurred during each fiscal period by the committee for its maintenance and functioning, and for such purposes as the Secretary, pursuant to this subpart, determines to be appropriate. Each first handler's pro rata share of such expenses shall be proportionate to the ratio between the total quantity of melons handled by him as the first handler thereof during a fiscal period and the total quantity of melons so handled by all handlers as first handlers thereof during such fiscal period.

§ 979.41 Budget.

Prior to or at the beginning of each fiscal period and as may be necessary thereafter, the committee shall prepare an estimated budget of income and expenditures necessary for the administration of this part. The committee may recommend a rate of assessment calculated to provide adequate funds to defray its proposed expenditures. The committee shall present such budget to the Secretary with an accompanying report showing the basis for its calculations.

§ 979.42 Assessments.

(a) The funds to cover the committee's expenses shall be acquired by the levying of assessments upon handlers as provided for in this subpart. Each handler who first handles melons shall pay assessments to the committee upon demand, which assessments shall be in payment of such handler's pro rata share of the committee's expenses;

(b) Assessments shall be levied during each fiscal period upon handlers at a rate per unit established by the Secretary. Such rates may be established upon the basis of the committee's recommendations and other available information;

(c) At any time during or after a given fiscal period the committee may recommend the approval of an amended budget and an increase in the rate of assessment in conformance with § 979.41. Upon the basis of such recommendations, or other available information, the Secretary may approve an amended budget and increase the assessment rate. Such increase shall be applicable to all melons which were handled by each first handler thereof during such fiscal period;

(d) The payment of assessments for the maintenance and functioning of the committee may be required irrespective of whether particular provisions of this part are suspended or become inoperative;

(e) To provide funds for the administration of the provisions of this part the committee may accept the payment of assessments in advance;

(f) If a handler does not pay his assessment within the time prescribed by the committee, the assessment may be increased by a late payment charge or an interest charge at rates prescribed by the committee with the approval of the Secretary.

§ 979.43 Accounting.

(a) All funds received by the committee pursuant to the provisions of this part shall be used solely for the purposes specified in this part. At the end of the fiscal period an annual financial audit shall be conducted by a competent accountant and two copies sent to the Secretary;

(b) The Secretary may at any time require the committee, its members and alternates, employees, agents, and all other persons to account for all receipts and disbursements, funds, property, or records for which they are responsible. Whenever any person ceases to be a member of the committee or alternate, he shall account to his successor, the committee, or to the person designated by the Secretary, for all receipts, disbursements, funds and property (including but not limited to books and other records) pertaining to the committee's activities for which he is responsible, and shall execute such assignments and other instruments as may be necessary or appropriate to

vest in the successor, the committee, or person designated by the Secretary, the right to all such property and funds and all claims vested in such person:

(c) The committee may make recommendations to the Secretary for one or more of the members thereof, or any other person to act as a trustee for holding records, funds, or any other committee property during periods of suspension of this part, or during any period or periods when regulations under this part are not in effect, and, if the Secretary determines such action appropriate, he may direct that such person or persons may act as such trustee or trustees.

§ 979.44 Excess funds.

(a) If, at the end of a fiscal period the assessments collected are in excess of expenses incurred, each handler entitled to a proportionate refund of any such assessments which represent payments by the handler in excess of his pro rata share, shall be credited with such refund against his operations of the following fiscal period or such excess shall be accounted for in accordance with one of the following:

(1) The committee, with the approval of the Secretary, may establish an operating monetary reserve and may carry over to subsequent fiscal periods excess funds in a reserve so established, except funds in the reserve shall not exceed approximately two fiscal periods' expenses. Such reserve funds may be used (i) to defray any expenses authorized under this part, (ii) to defray expenses during any fiscal period prior to the time assessment income is sufficient to cover such expenses, (iii) to cover deficits incurred during any fiscal period when assessment income is less than expenses, (iv) to defray expenses incurred during any period when any or all provisions of this part are suspended or are inoperative, and (v) to cover necessary expenses of liquidation in the event of termination of this part. Any funds remaining after termination should be refunded to handlers on a pro rata basis. If it is found impracticable to return such remaining funds to handlers, such funds shall be disposed of in such manner as the Secretary may determine to be appropriate;

(2) If such excess is not retained in a reserve or used to defray necessary expenses of liquidation, as provided for in paragraph (a)(1) of this section, it shall be refunded proportionately to the handlers from whom collected, except any sum paid by any handler in excess of his pro rata share of the expenses during any fiscal period may be applied by the committee at the end of such fiscal period to any outstanding obligations due the committee from such handler.

Research and Development

§ 979.48 Research and development.

The committee, with the approval of the Secretary, may establish or provide for the establishment of production research, marketing research, and development projects designed to assist, improve, or promote the marketing, distribution, consumption, or efficient production of melons. The expenses of such projects shall be paid from funds collected pursuant to § 979.42.

Regulations

§ 979.50 Marketing policy.

(a) Prior to or at the same time initial recommendations in any fiscal period are made pursuant to § 979.51, and as the Secretary may require, the committee shall prepare a marketing policy statement. Notice of such marketing policy shall be given to producers, handlers, and other interested parties by bulletins, newspapers or other appropriate media, and copies thereof shall be submitted to the Secretary and shall be available at the committee office to all interested parties;

(b) Marketing policy statements relating to recommendations for regulations shall give appropriate consideration to melon supplies for the remainder of the season, with special consideration to:

(1) Estimates of total supplies including grade, size, and quality thereof, in the production area;

(2) Estimates of supplies of melons in competing areas;

(3) Estimates of supplies of other competing commodities;
(4) Market prices by grades, sizes, containers, and packs;
(5) Anticipated marketing problems;
(6) Level and trend of consumer income; and
(7) Other relevant factors.

§ 979.51 Recommendations for regulations.

Upon complying with requirements of § 979.50, the committee may recommend regulations to the Secretary when it finds that such regualtions as are authorized in this order will tend to effectuate the declared policy of the act.

§ 979.52 Issuance of regulations.

(a) The Secretary shall limit by regulation the handling of melons when he finds from the recommendations and information submitted by the committee, or from other available information, that such regulations would tend to effectuate the declared policy of the act.
(b) Such regulations may:
(1) Limit the handling of particular grades, sizes, maturities, qualities, or packs, or any combination thereof, of any or all varieties of melons during any period;
(2) Limit the handling of particular grades, sizes, maturities, qualities, or packs of melons differently for different varieties, for different markets, for different containers, or any combination of the foregoing, during any period;
(3) Fix the size, capacity, weight, dimension, or pack of the container, or containers, which may be used in the packaging or handling of melons, including appropriate container markings to identify the contents thereof.
(c) The regulations or any portions of such regulations issued hereunder may be amended, modified, suspended, or terminated by the Secretary whenever it is determined:
(1) That such action is warranted upon recommendation of the committee or other available information;
(2) That such action is essential to provide relief from inspection, assessment, or regulations under paragraph (b) of this section for minimum quantities less than customary commercial transactions; or
(3) That regulations issued hereunder obstruct or no longer tend to effectuate the declared policy of the act.

§ 979.54 Handling for special purposes.

Regulations in effect pursuant to §§ 979.42, 979.52, or 979.60 may be modified, suspended, or terminated by the Secretary, upon recommendation of the committee, to facilitate handling of melons for: (a) Relief or charity, (b) experimental purposes, (c) exports, and (d) other special purposes, which may be recommended by the committee and approved by the Secretary.

§ 979.55 Safeguards.

The committee, with the approval of the Secretary, may establish through rules and regulations, the requirements with respect to proof that shipments made pursuant to § 979.54 were handled and used for the purpose stated.

§ 979.56 Notification of regulations.

The Secretary shall promptly notify the committee of regulations issued and of any modification, suspension, or termination thereof. The committee shall give notice thereof to all handlers of melons in the production area. In addition, the committee shall make the information available to growers through appropriate news releases or such other means as may be available.

Inspection

§ 979.60 Inspection and certification.

(a) Whenever the handling of melons is regulated pursuant to § 979.52 or at other times when recommended by the committee and approved by the Secretary, no handler shall handle melons unless they are inspected by an authorized representative of the Federal-State Inspection Service and are covered by a valid inspection certificate, except when relieved from such requirements pursuant to § 979.52(c), or § 979.54, or paragraph (b) of this section. The cost of such inspection shall be borne by the applicant.

(b) Regrading, resorting, repacking any lot of melons, or breaking any lot (without continuing identification of applicable inspection or subcertification thereof) shall invalidate any applicable inspection certificate insofar as the requirements of this section are concerned. No handler shall handle melons after a lot has been broken, regraded, repacked, or resorted, or in any other way additionally prepared for market, unless such melons are inspected by an authorized representative of the Federal or Federal-State Inspection Service. Such inspection requirements on regraded, resorted, repacked, or broken lots of melons may be modified, suspended or terminated upon recommendation by the committee, and approval of the Secretary.

(c) Insofar as the requirements of this section are concerned, the length of time for which an inspection certificate is valid may be established by the committee with the approval of the Secretary.

(d) When melons are inspected in accordance with the requirements of this section, a copy of each inspection certificate issued shall be made available to the committee by the Inspection Service.

(e) The committee may recommend and the Secretary may require that no handler shall transport or cause the transportation of melons by motor vehicle or by other means unless such shipment is accompanied by a copy of the inspection certificate issued thereon, or such other documents as may be required by the committee. Such certificates or documents shall be surrendered to proper authorities at such time and in such manner as may be designated by the committee, with the approval of the Secretary.

Reports

§ 979.80 Reports.

Upon request of the committee, made with the approval of the Secretary, each handler shall furnish to the committee, in such manner and form and at such time as it may prescribe, such reports and other information as may be necessary for the committee to perform its duties under this part.

(a) Such reports may include, but are not necessarily limited to, the following:

(1) The number of acres of melons and the approximate dates planted, for all melons which will be handled by each handler;

(2) The quantities of melons received by a handler;

(3) Identification of the inspection certificates relating to the melons which were handled pursuant to § 979.52 or § 979.54 or both.

(b) All such reports shall be held under appropriate protective classification and custody by the committee, or duly appointed employees thereof, so that the information contained therein which may adversely affect the competitive position of any handler in relation to other handlers will not be disclosed. Compilations of general reports from data submitted by handlers is authorized, subject to the prohibition of disclosure of individual handlers' identities or operations.

(c) Each handler shall maintain for at least 2 succeeding years such records and documents on melons received by him as may be necessary to verify reports submitted to the committee pursuant to this section.

(d) For the purpose of assuring compliance with recordkeeping requirements and certifying reports of handlers, the Secretary and the committee, through their duly authorized employees or agents, shall have access to any premises where applicable records are located, and where melons are handled, and at any time during reasonable business hours shall be permitted to inspect such handler's premises and examine any and all records of such persons with respect to matters within the purview of this part.

(e) Any person filing a report, record, or application that is willfully misrepresented shall be subject to the legal penalties for such misrepresentation of Government reports.

Compliance

§ 979.81 Compliance.

Except as provided in this subpart, no handler shall handle melons, the handling of which has been prohibited by the Secretary in accordance with

provisions of this subpart, or the rules and regulations thereunder, and no handler shall handle melons except in conformity with the provisions of this part.

MISCELLANEOUS PROVISIONS

§ 979.82 Right of the Secretary.

The members of the committee (including successors and alternates) and any agents or employees appointed or employed by the committee shall be subject to removal or suspension by the Secretary, at any time. Each and every order, regulation, decisions, determination, or other act of the committee shall be subject to the continuing right of the Secretary to disapprove of the same at any time. Upon such disapproval, the disapproved action of said committee shall be deemed null and void, except as to acts done in reliance thereon or in compliance therewith prior to such disapproval by the Secretary.

§ 979.83 Effective time.

The provisions of this subpart or any amendment thereto shall become effective at such time as the Secretary may declare and shall continue in force until terminated in one of the ways specified in this subpart.

§ 979.84 Termination.

(a) The Secretary shall, whenever he finds that any or all provisions of this subpart obstruct or do not tend to effectuate the declared policy of this act, terminate or suspend the operation of this subpart or such provision thereof.

(b) The Secretary shall terminate the provisions of this subpart at the end of the then current fiscal period whenever he finds that such termination is favored by a majority of the growers who, during a representative period determined by the Secretary, have been engaged in the production for market of melons within the production area: *Provided*, That such majority has during such representative period, produced for market more than 50 percent of the volume of such melons produced for market.

(c) The provisions for this subpart shall, in any event, terminate whenever the provisions of the Act authorizing them cease to be in effect.

§ 979.85 Proceedings after termination.

(a) Upon the termination of the provisions of this subpart, the then functioning members of the committee shall continue as joint trustees for the purpose of settling the affairs of the committee by liquidating all funds and property then in the possession of or under control of the committee, including claims for any funds unpaid or property not delivered at the time of such termination. Action by said trusteeship shall require the concurrence of a majority of the said trustees.

(b) The said trustees shall continue in such capacity until discharged by the Secretary; shall, from time to time, account for all receipts and disbursements and deliver all property on hand, together with all books and records of the committee and of the trustees, to such persons as the Secretary may direct; and shall upon request of the Secretary, execute such assignments or other instruments necessary or appropriate to vest in such persons full title and right to all of the funds, property and claims vested in the committee or the trustees pursuant to this subpart.

(c) Any person to whom funds, property or claims have been transferred or delivered by the committee or its members, pursuant to this section, shall be subject to the same obligations imposed upon the members of the committee and upon the said trustees.

§ 979.86 Effect of termination or amendments.

Unless otherwise expressly provided by the Secretary, the termination of this subpart or of any regulation issued pursuant to this subpart, or the issuance of any amendments to either thereof, shall not (a) affect or waive any right, duty, obligation or liability which shall have arisen or which may thereafter arise in connection with any provision of this subpart, or (b) release or extinguish any violation of this subpart or any regulation issued under this subpart, or (c) affect or impair any rights or remedies of the

Secretary or of any other person with respect to any such violation.

§ 979.87 Duration of immunities.

The benefits, privileges and immunities conferred upon any person by virtue of this subpart shall cease upon the termination of this subpart, except with respect to acts done under and during the existence of this subpart.

§ 979.88 Agents.

The Secretary may, by designation in writing, name any person, including any officer or employee of the U.S. Department of Agriculture, to act as his agent or representative in connection with any of the provisions of this subpart.

§ 979.89 Derogation.

Nothing contained in this subpart is, or shall be construed to be, in derogation or in modification of the rights of the Secretary or of the United States to exercise any powers granted by the act or otherwise, or, in accordance with such powers, to act in the premises whenever such action is deemed advisable.

§ 979.90 Personal liability.

No member or alternate member of the committee nor any employee or agent thereof, shall be held personally responsible, either individually or jointly with others in any way whatever, to any handler or to any person for errors in judgment, mistakes or other acts, either of commission or omission, as such member, alternate, agent or employee, except for acts of dishonesty, willful misconduct or gross negligence.

§ 979.91 Separability.

If any provision of this subpart is declared invalid, or the applicability thereof to any person, circumstance, or thing is held invalid, the validity of the remainder of this subpart, or the applicability thereof to any other person, circumstance, or thing, shall not be affected thereby.

§ 979.92 Amendments.

Amendments to this subpart may be proposed from time to time, by the committee or by the Secretary.

§ 979.93 Counterparts.

This agreement may be executed in multiple counterparts and when one counterpart is signed by the Secretary, all such counterparts shall constitute, when taken together, one and the same instrument as if all signatures were contained in one original.[1]

§ 979.94 Additional parties.

After the effective date hereof, any handler may become a party to this agreement if a counterpart is executed by him and delivered to the Secretary. This agreement shall take effect as to such new contracting party at the time such counterpart is delivered to the Secretary, and the benefits, privileges, and immunities conferred by this agreement shall then be effective as to such new contracting party.[1]

§ 979.95 Order with marketing agreement.

Each signatory handler hereby requests the Secretary to issue, pursuant to the act, an order providing for regulating the handling of melons in the same manner as is provided for in this agreement.[1]

Subpart—Rules and Regulations

General Procedures

§ 979.100 Order.

"Order" means Order No. 979 (§§ 979.1 to 979.92; 44 FR 22038) regulating the handling of melons grown in South Texas.

[44 FR 28780, May 17, 1979]

§ 979.106 Registered handler.

For purposes of this part, a registered handler is a person who has adequate facilities for packing melons for market and who assumes initial responsibility for compliance with inspection, assessment, and other regulatory requirements on the handling

[1] Applicable only to the proposed marketing agreement.

of melons grown in the production area. Any person who wishes to become a registered handler shall make application for registration with the committee on forms furnished by the committee. If such applicant has facilities available which are determined by the committee as adequate for the packing of melons, such person may be approved as a registered handler. Growers who make deliveries of fieldrun melons to such registered handlers are hereby determined to be exempt from otherwise applicable regulations pursuant to this part.

[44 FR 28780, May 17, 1979]

§ 979.110 Fiscal period.

The fiscal period which began on May 17, 1979 (44 FR 28780) shall end September 30, 1979. Thereafter, each fiscal period shall begin on October 1 of each year and end on September 30 of the following year.

[44 FR 56684, Oct. 2, 1979]

§ 979.122 Eligibility requirements for public members.

(a) A public member shall represent a nonagricultural point of view, and shall not have a financial (or economic) interest in, or be closely associated with the production, processing, financing or marketing of melons.

(b) Public members should be able to devote sufficient time and express a willingness to attend committee activities regularly and to familiarize themselves with the background and economics of the industry.

(c) Public members must be residents of the production area.

(d) Public members shall be nominated by the South Texas Melon Committee and shall serve a two-year term which coincides with the term of office of producer or handler members of the committee.

[44 FR 28781, May 17, 1979]

§ 979.126 Nomination procedures for public members.

(a) Names of candidates together with evidence of qualification for public membership on the South Texas Melon Committee shall be submitted to the committee at its business office.

(b) Questionnaires may be sent by the committee to those persons submitted as candidates, to determine their eligibility and interest in becoming a public member.

(c) The names of persons nominated for the public member and alternate positions shall be submitted by the incumbent committee to the Secretary by January 15 with such information as deemed pertinent by the committee or as requested by the Secretary.

(d) Nomination of the initial public member shall be made as soon as possible but not later than 90 days after the first meeting of the committee.

[44 FR 28781, May 17, 1979]

§ 979.132 Procedure.

The committee shall be authorized to meet by telephone or other means of communication. Any vote at such a meeting shall be promptly confirmed in writing by each voter. On such occasions seven affirmative votes shall be necessary to approve any action. Telephone meetings shall be called only by the Committee chairman or vice-chairman acting in his stead.

[44 FR 28781, May 17, 1979]

§ 979.152 Handling of culls.

(a) The handling of culls, i.e., melons which fail to meet the grade, size, quality or other requirements established under § 979.52(b) of this part is prohibited unless such melons are:

(1) Mechanically spiked or mutilated at the packing shed rendering them unsuitable for fresh market; or

(2) Handled for special purpose outlets approved under § 979.54 of this part.

(b) As a safeguard against culls entering fresh market channels each handler under paragraph (a)(2) of this section shall apply for and obtain a certificate from the committee which shall require the handler to furnish such reports or other information as the committee may request.

[44 FR 28781, May 17, 1979]

§ 979.155 Safeguards.

(a) *Policy.* Whenever shipments of melons for special purposes pursuant to § 979.54 are relieved in whole or in

part from regulations issued under § 979.52, the committee may require information and evidence on the manner, methods, and timing of such shipments as safeguards against the entry of any such melons in trade channels other than those for which intended. Such information and evidence shall include requirements set forth below with respect to Certificates of Privilege.

(b) *Qualification.* Before handling melons for special purposes which do not meet regulations issued pursuant to § 979.52, a handler, when required by such regulations, must qualify with the committee to handle shipments for special purposes. To qualify one must (1) apply for and receive a Certificate of Privilege indicating the intent to so handle melons, (2) agree to comply with reporting and other requirements set forth in § 959.155 with respect to such shipments, and (3) receive approval of the committee, or its duly authorized agents, to so handle melons. Such approval will be based upon evidence furnished in the application for Certificate of Privilege and other information available to the committee.

(c) *Application.* (1) Applications for a Certificate of Privilege shall be made on forms furnished by the committee. Each application may contain, but need not be limited to, the name and address of the handler; the quantity by grade, size, quality and container of the melons to be shipped; the mode of transportation; the consignee; the destination; the purpose for which the melons are to be used; and certification to the United States Department of Agriculture and to the committee as to the truthfulness of the information shown thereon, and any other appropriate information or documents deemed necessary by the committee or its duly authorized agents for the purposes stated in § 979.155.

(2) The committee may require each handler making shipments of melons for export to include with his application a copy of the Department of Commerce Shippers Export Declaration Form No. 7525-V applicable to such shipment.

(d) *Approval.* The committee or its duly authorized agents shall give prompt consideration to each application for a Certificate of Privilege. Approval of an application, based upon the determination as to whether the information contained therein and other information available to the committee supports approval, shall be evidenced by the issuance of a Certificate of Privilege to the applicant. Each certificate shall cover a specified period and specified qualities and quantities of melons to be sold or transported to a designated consignee for the purpose declared.

(e) *Reports.* Each handler of melons shipping under Certificates of Privilege shall supply the committee with reports as requested by the committee, or its duly authorized agents, showing the name and address of the shipper; the car or truck identification; the loading point; destination; consignee; the inspection certificate number when inspection is required; and any other information deemed necessary by the committee.

(f) *Disqualification.* The committee from time to time may conduct surveys of handling of melons for special purposes requiring Certificates of Privilege to determine whether handlers are complying with the requirements and regulations applicable to such certificates. Whenever the committee finds that the handler or consignee is failing to comply with requirements and regulations applicable to handling of melons in special outlets and requiring such certificates, a Certificate or Certificates of Privilege issued such handler may be rescinded and subsequent certificates denied. Such disqualification shall apply to, and not exceed, a reasonable period of time as determined by the committee, but in no event shall it extend beyond the date of the succeeding fiscal period. Any handler who has a certificate rescinded or denied may appeal to the committee in writing for reconsideration of his disqualification.

[44 FR 28781, May 17, 1979]

§ 979.180 Reports

Each handler shall furnish every two weeks during the planting season to the committee on a form provided by the committee the number of acres

of cantaloups and honey dew melons planted by the handler or growers for whom the handler packs melons during such period and the location of such plantings. However, during the first season of operation under the order each handler need only report the number of acres each of cantaloups and honey dew melons planted together with the location of all such plantings.

[44 FR 28781, May 17, 1979]

§ 979.304 Handling regulation.

During the period beginning May 1 and ending on June 30 each season no person shall handle cantaloup or honeydew melons unless they meet the requirements of paragraphs (a) through (c), (d) or (e) and (f) of this section.

(a) *Grade requirements.* Not more than 50 percent of the melons in any lot may fail to meet the requirements of U.S. Commercial grade except no more than 20 percent shall be allowed for serious damage, and including in this latter amount not more than 10 percent for melons affected by soft decay. Black surface discoloration shall not be considered as a grade defect with respect to such grade. Individual cartons shall contain not less than 25 percent U.S. Commercial or better quality.

(b) *Container requirements.* (1) Except as provided in paragraphs (b)(4), (d) or (e) and (f) of this section all cantaloups shall be packed in fiberboard cartons with inside dimensions of not more than 17¼ nor less than 16¾ inches in length, not more than 13 nor less than 12¾ inches in width, and not more than 10⅜ nor less than 9¾ inches in depth. All honeydew melons shall be packed in fiberboard cartons with inside dimensions of 17 inches long by 15¼ inches wide and not more than 7½ inches nor less than 6½ inches deep. A tolerance of ¼ inch for each dimension shall be permitted.

(2) Each carton shall be marked to indicate the count; the name, address, and zip code of the shipper; the name of the product; and the words "Produce of U.S.A." or "Product of U.S.A."

(3) If the carton in which the melons are packed is not clean and bright in appearance without marks, stains, or other evidence of previous use, the carton shall be conspicuously marked with the words "USED BOX" in letters nor less than three-fourths (¾) inch high.

(4) Honeydew melons maybe packed in bulk containers of 48 inches long by 40 inches wide by 24 inches deep or similar dimensions.

(5) These container requirements shall not be applicable to melons sold to Federal agencies.

(c) *Inspection.* (1) No handler may handle any melons regulated hereunder, except pursuant to paragraphs (d) or (e) and (f) of this section, unless an inspection certificate has been issued covering them and the certificate is valid at the time of shipment.

(2) No handler may transport by motor vehicle or cause such transportation of any shipment of melons for which an inspection certificate is required unless each such shipment is accompanied by a copy of the inspection certificate applicable thereto or by documentary evidence on forms furnished by the committee identifying truck lots to which a valid inspection certificate is applicable. A copy of such inspection certificate or committee document shall be surrendered upon request to authorities designated by the committee.

(3) For purposes of operation under this part each inspection certificate or committee form required as evidence of inspection is hereby determined to be valid for a period not to exceed 72 hours following completion of inspection as shown on the certificate.

(4) Designated inspection stations will be located at the Texas Federal Inspection Service office, 1301 W. Expressway, Alamo (Phone (502) 787-4091 or 6881) and the Matt Dietz Packing Co., 4700 N. Santa Maria, Laredo (Phone (512) 723-9178 or 9170), to be available for handlers who do not have permanent packing facilities recognized by the committee.

(5) Handlers shall pay assessments on all assessable melons according to the provisions of § 979.42, at the rate of ¾¢ per carton.

(d) *Minimum quantity exemption.* Any handler may handle, other than for resale, up to, but not to exceed 120 pounds net weight of melons per day

without regard to the provisions of §§ 979.42, 979.52, 979.60, and 979.80, but this exemption shall not apply to any shipment or any portion thereof of over 120 pounds of melons.

(e) *Special purpose shipments.* (1) The requirements of paragraphs (a) through (c) of this section shall not apply to shipments for charity, relief, canning and freezing if a handler presents a Certificate of Privilege for such melons prior to handling them in accordance with § 979.155.

(2) Melons failing to meet the requirements of paragraphs (a) through (c) of this section and not exempt under paragraphs (d) or (e), and all melons discarded from the grading table shall either be mechanically spiked or mutilated or handled for special purpose outlets in accordance with § 979.152.

(3) Upon approval of the committee, shipments of honeydew melons may be made in pony cartons having dimensions of 17 inches long by 14½ inches wide by 5⅝ inches deep. Container requirements of paragraph (b) of this section shall not apply, but such shipments shall meet all other applicable requirements of this section.

(f) *Safeguards.* Each handler making shipments of melons for relief, charity, canning or freezing under paragraph (e) of this section shall:

(1) Notify the committee of the intent to ship melons under paragraph (e) of this section by applying on forms furnished by the committee for a Certificate of Privilege applicable to such special purpose shipments.

(2) Obtain an approved Certificate of Privilege.

(3) Prepare on forms furnished by the committee a special purpose shipment report for each individual shipment.

(4) Forward copies of the special purpose shipment report to the committee office and to the receiver with instructions to the receiver to sign and return a copy to the committee's office. Failure of the handler or receiver to report such shipments by promptly signing and returning the applicable special purpose shipment report to the committee office shall be cause for suspension of such handler's Certificate of Privilege applicable to such shipments.

(g) *Definitions.* "U.S. melon standards" mean the United States Standards for Grades of Cantaloups (7 CFR 2851.475-2851.494c), or the United States Standards for Grades of Honey Dew and Honey Ball Type Melons (7 CFR 2851.3740-2851.3749), whichever is applicable, or variations thereof specified in this section. The term "U.S. Commercial" shall have the same meaning as set forth in these standards. All other terms used in this section shall have the same meaning as when used in Marketing Agreement No. 156 and this part.

[47 FR 13118, Mar. 29, 1982, as amended at 47 FR 24110, June 3, 1982; 48 FR 21881, May 16, 1983; 49 FR 15542, Apr. 19, 1984; 50 FR 10207, Mar. 14, 1985]

NOTE: After January 1, 1979, "Budget of Expenses and Rate of Assessment" regulations (e.g., sections .200 through .299) and "Handling" regulations (e.g., sections .300 through .399) which are in effect for a year or less, will not be carried in the Code of Federal Regulations. For FEDERAL REGISTER citations affecting these regulations, see the "List of CFR Sections Affected" in this volume.

PART 980—VEGETABLES; IMPORT REGULATIONS

Sec.

980.1 Import regulations; Irish potatoes.
980.116 Onion import regulation.
980.117 Import regulations; onions.
980.212 Import regulations: tomatoes.

AUTHORITY: Secs. 1-19, 48 Stat. 31, as amended; 7 U.S.C. 601-674.

§ 980.1 Import regulations; Irish potatoes.

(a) *Findings and determinations with respect to imports of Irish potatoes.* (1) Pursuant to section 8e of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), it is hereby found that:

(i) Grade, size, quality, and maturity regulations have been issued from time to time pursuant to the following marketing orders: No. 949 (Part 949 of this chapter), No. 945 (Part 945 of this chapter), No. 948 (Part 948 of this chapter), No. 947 (Part 947 of this chapter), No. 950 (Part 950 of this chapter), No. 946 (Part 946 of this

chapter), and No. 953 (Part 953 of this chapter);

(ii) During the past several years, grade, size, quality, and maturity regulations have been in effect pursuant to two or more of such orders during each month of the year;

(iii) The marketing of Irish potatoes can be reasonably distinguished by the several seasonal categories, i.e., winter, early spring, late spring, early summer, late summer, and fall. The bulk of the fall crop is harvested and placed in storage in the fall and marketed over a period of several months extending into the following summer. But potatoes harvested from the other seasonal crops are generally marketed as the potatoes are harvested. The marketing seasons for these crops overlap.

(iv) Concurrent grade, size, quality, and maturity regulations under two or more of the aforesaid marketing orders are expected in the ensuing and future seasons, as in the past.

(2) Therefore it is hereby determined that:

(i) Imports of red skinned, round type potatoes during the months of September through the following June are in most direct competition with the marketing of the same type potatoes produced in Area No. 2, Colorado (San Louis Valley) covered by Order No. 948, as amended (Part 948 of this chapter); and during the months of July and August the marketing of the same type potatoes is in most direct competition with the same type as produced in the area covered by Order No. 946 (Part 946 of this chapter).

(ii) Imports of all other round type potatoes during the period June 5 through July 31 are in most direct competition with the marketing of the same type potatoes produced in the Southeastern States covered by Order No. 953 (Part 953 of this chapter); and during the period August 1 through June 4 of the following year they are in most direct competition with all other round type potatoes produced in Area No. 3, Colorado (Northern Colorado) covered by Marketing Order No. 948, as amended (Part 948 of this chapter): *Provided*, That for the period March 6 through June 14, 1968, imports of all other round type potatoes are in most direct competition with the marketing of the same type potatoes produced in the State of Maine covered by Order No. 950 (Part 950 of this chapter): *Provided further*, That for the period June 1 through June 4, 1970, imports of all other round type potatoes are in most direct competition with the marketing of the same type potatoes produced in the Southeastern States covered by Order No. 953 (Part 959 of this chapter): *Provided further*, That for the period June 1 through June 4, 1971, imports of all other round type potatoes are in most direct competition with the marketing of the same type potatoes produced in the Southeastern States covered by Order No. 953 (Part 953 of this chapter).

(iii) Imports of long type potatoes during each month of the marketing year are in most direct competition with potatoes of the same type produced in the area covered by Order No. 945 (Part 945 of this chapter).

(b) *Grade, size, quality, and maturity requirements.* On and after the effective date hereof importation of Irish potatoes, except certified seed potatoes, shall be prohibited unless they comply with the following requirements.

(1) For the period September 1 through the following June of each marketing year, the grade, size, quality, and maturity requirements of Area No. 2, Colorado (San Louis Valley) covered by Marketing Order No. 948, as amended (Part 948 of this chapter) applicable to potatoes of the red skinned round type; and for the months of July and August each marketing year the grade, size, quality, and maturity requirements of Marketing Order No. 946 (Part 946 of this chapter) shall be the respective grade, size, quality, and maturity requirements for imported red skinned round type potatoes.

(2) During the period June 5 through July 31 of each marketing year, the grade, size, quality, and maturity requirements of Marketing Order No. 953 (Part 953 of this chapter) applicable to potatoes of the round type shall be the respective grade, size, quality, and maturity re-

quirements for imports of other round type potatoes; and during the period August 1 through the following June 4 of each year the grade, size, quality, and maturity requirements of Area No. 3, Colorado (northern Colorado) covered by Marketing Order No. 948, as amended (Part 948 of this chapter) shall be the respective grade, size, quality, and maturity requirements for imports of all other round type potatoes: *Provided*, That for the period March 6 through June 14, 1968, the grade, size, quality, and maturity requirements of Marketing Order No. 950, as amended (Part 950 of this chapter) applicable to potatoes of the round type shall be the respective grade, size, quality, and maturity for imports of other round type potatoes: *Provided further*, That for the period June 1 through June 4, 1970, the grade, size, quality, and maturity requirements of Marketing Order No. 953, as amended (Part 953 of this chapter) applicable to potatoes of the round types shall be the respective grade, size, quality, and maturity for imports of other round type potatoes: *Provided further*, That for the period June 1 through 4, 1971, the grade, size, quality, and maturity requirements of Marketing Order No. 953, as amended (Part 953 of this chapter) applicable to potatoes of the round types shall be the respective grade, size, quality, and maturity for imports of other round type potatoes.

(3) Through the entire year the grade, size, quality, and maturity requirements of Marketing Order 945, as amended (Part 945 of this chapter) applicable to potatoes of all long types shall be the respective grade, size, quality, and maturity requirements for imported potatoes of all long types.

(4) The grade, size, quality, and maturity requirements as provided for in this paragraph shall apply to imports of similar types of potatoes, unless otherwise ordered, on and after the effective date of the applicable domestic regulation or amendment thereto, as provided in this paragraph or 3 days following publication of such regulation or amendment in the FEDERAL REGISTER, whichever is later.

(c) *Minimum quantities.* Any importation which, in the aggregate, does not exceed 500 pounds may be imported without regard to the provisions of this section.

(d) *Plant quarantine.* No provisions of this section shall supersede the restrictions or prohibitions of potatoes under the Plant Quarantine Act of 1912.

(e) *Certified seed.* Certified seed potatoes shall include only those potatoes which are officially certified and tagged as seed potatoes by the Plant Protection Division, Research Branch, Canada Department of Agriculture.

(f) *Designation of governmental inspection services.* The Federal or Federal-State Inspection Service, Fruit and Vegetable Division, Agricultural Marketing Service, U.S. Department of Agriculture and the Fruit and Vegetable Division, Production and Marketing Branch, Canada Department of Agriculture, are hereby designated as governmental inspection services for the purpose of certifying the grade, size, quality, and maturity of Irish potatoes that are imported, or to be imported, into the United States under the provisions of section 8e of the Act.

(g) *Inspection and official inspection certificates.* An official inspection certificate certifying the potatoes meet the United States import requirements for Irish potatoes under section 8e (7 U.S.C. 608e) issued by a designated governmental inspection service applicable to a particular shipment of potatoes is required on all imports of potatoes other than certified seed.

(1)(i) Inspection and certification by the Federal or Federal-State Inspection Service will be available and performed in accordance with the rules and regulations governing certification of fresh fruits, vegetables, and other products (Part 51 of this title), and each lot shall be made available and accessible for inspection as provided therein. Cost of inspection and certification shall be borne by the applicant.

(ii) Since inspectors may not be stationed in the immediate vicinity of a port, or point of entry, an importer of uninspected and uncertified Irish potatoes should make advance arrangements for inspection. Each importer should give at least the specified advance notice to one of the following

applicable inspection offices prior to the time the Irish potatoes would be imported.

Ports and points	Inspection office	Advance notice (days)
All Maine ports and points.	Officer-In-Charge, Post Office Box 686, Caribou, Maine 04736 (Telephone—496-8511).	1
Port of Boston, Mass.	Officer-In-Charge, Room 725, 408 Atlantic Ave., Boston, Mass. 02210 (Telephone—223-7753).	1
Port of New York, N.Y.	Officer-In-Charge, Room 28A, Hunts Point Market, Bronx, N.Y. 10474 (Telephone—991-7669 and 7668).	1
Port of Philadelphia, Pa.	Officer-In-Charge, Room 239, Produce Bldg., 3301 South Galloway St., Philadelphia, Pa. 19148 (Telephone—Dewey 6-0845).	1
Port of New Orleans, La.	Officer-In-Charge, Room 5027, Federal Office Bldg., 701 Loyola Ave., New Orleans, La. 70113 (Telephone—527-6741 and 6742).	
All other ports and points.	Chief, Fresh Products Standardization and Inspection Branch, Fruit and Vegetable Division, AMS, USDA, Washington, D.C. 20250 (Telephone—447-5870).	3

(2) In the event the required inspection is performed prior to the arrival of the potatoes at the port of entry, the inspection certificate that is issued must show that the inspection was performed at the time of loading such potatoes for direct transportation to the United States; and if transportation is by water, the certificate must show that the inspection was performed at the time of loading onto the vessel.

(3) Inspection certificates shall cover only the quantity of potatoes that is being imported at a particular port of entry by particular importers.

(4) Each inspection certificate issued with respect to any Irish potatoes to be imported into the United States shall set forth, among other things:

(i) The date and place of inspection;

(ii) The name of the shipper, or applicant;

(iii) The commodity inspected;

(iv) The quantity of the commodity covered by the Certificate;

(v) The principal identifying marks of the containers;

(vi) The railroad car initials and number, the truck and trailer number, the name of the vessel, or other identification of the shipment; and

(vii) The following statement if the facts warrant: Meets U.S. Import requirements under section 8e of the Agricultural Marketing Agreement Act of 1937.

(h) *Reconditioning prior to importation.* Nothing contained in this part shall be deemed to preclude any importer from reconditioning prior to importation any shipment of Irish potatoes for the purpose of making it eligible for importation under the Act.

(1) *Definitions.* (i) For the purpose of this part potatoes meeting the requirements of Canada No. 1 grade and Canada No. 2 grade shall be deemed to comply with the requirements of the U.S. No. 1 grade and U.S. No. 2 grade, respectively, and the tolerances for size, as set forth in the U.S. Standards for Potatoes (§§ 51.1540 to 51.1556, inclusive of this title) may be used.

(2) "Importation" means release from custody of the U.S. Bureau of Customs.

[34 FR 8044, May 22, 1969, as amended at 35 FR 8204, May 26, 1970; 36 FR 9634, May 27, 1971; 37 FR 8059, Apr. 25, 1972]

§ 980.116 Onion import regulation.

Except as otherwise provided herein, during the period beginning August 1, 1977, and continuing through April 30, 1978, no person may import any lot of onions, except braided red varieties, unless such onions are inspected, are at least "moderately cured" and meet the other requirements of this section.

(a) *Grade and size requirements—*

(1) *White varieties:* U.S. No. 2 or better grade, 1 inch minimum diameter.

(2) *Red varieties.* U.S. No. 2 or better grade, 1½ inches minimum diameter.

(3) *All other varieties:* U.S. No. 2, or better grade, 1½ inches minimum diameter.

(b) *Condition.* Due consideration shall be given to the time required for transportation and entry of onions

into the United States. Onions with transit time from country of origin to entry into the United States of ten or more days may be entered if they meet an average tolerance for decay of not more than 5 percent, provided they meet the other requirements of this section.

(c) *Minimum quantity.* Any importation which in the aggregate does not exceed 100 pounds in any day, may be imported without regard to the provisions of this section.

(d) *Plant quarantine.* Provisions of this section shall not supersede the restrictions or prohibitions on onions under the Plant Quarantine Act of 1912.

(e) *Designation of governmental inspection service.* The Federal or the Federal-State Inspection Service, Food Safety and Quality Service, Agricultural Marketing Service, U.S. Department of Agriculture, and the Fruit and Vegetable Division, Production and Marketing Branch, Canada Department of Agriculture, are designated as governmental inspection services for certifying the grade, size, quality and maturity of onions that are imported into the United States under the provisions of section 8e of the act.

(f) *Inspection and official inspection certificates.* (1) An official inspection certificate certifying the onions meet the United States import requirements for onions under Section 8e of the act (7 U.S.C. 608e-1), issued by a designated governmental inspection service and applicable to a specific lot is required on all imports of onions.

(2) Inspection and certification by the Federal or Federal-State Inspection Service will be available and performed in accordance with the rules and regulations governing certification of fresh fruits, vegetables and other products (Part 51 of this title). Each lot shall be made available and accessible for inspection as provided therein. Cost of inspection and certification shall be borne by the applicant.

(3) Since inspectors may not be stationed in the immediate vicinity of some smaller ports of entry, importers of onions should make advance arrangements for inspection by ascertaining whether or not there is an inspector located at their particular port of entry. For all ports of entry where an inspection office is not located, each importer must give the specified advance notice to the applicable office listed below prior to the time the onions will be imported.

Ports	Office	Advance notice (days)
All Texas points	Leo M. Denbo, P.O. Box 107, San Juan, Tex. 78589; phone 512-787-4091 or 6881.	1
All Arizona points	Charles R. Everette, P.O. Box 1614, Nogales, Ariz. 85621; phone 602-287-2902.	1
All California points	T. A. Trombatore, 784 South Central Ave., room 266, Los Angeles, Calif. 90021; phone 213-688-2489.	3
All Hawaii points	Stevenson Ching, P.O. Box 22159, Pawaa Substation, 1428 South King St., Honolulu, Hawaii 96822; phone 808-941-3071.	1
All Puerto Rico points	Ronald Nightengale, P.O. Box 9112, Santurce, Puerto Rico 00908; phone 809-783-2230 or 4116.	2
New York City, N.Y.	Carmine J. Cavallo, room 28A, Hunts Point Market, Bronx, N.Y. 10474; phone 212-991-7669 or 7668.	1
New Orleans, La	Leonard E. Mixon, 5027 Federal Office Bldg., 701 Loyola Ave., New Orleans, La. 70113; phone 504-589-6741 or 6742.	1
Miami, Fla	Bennie C. Tiner, 1350 NW. 12th Ave., room 530, Miami, Fla. 33136; phone 305-324-6116 or 6117.	1
All other Florida points	C. B. Brantley, P.O. Box 1232, Winter Haven, Fla. 33880; phone 813-294-3511, extension 33.	1
All other points	M. A. Castille, Food Safety and Quality Service, Washington, D.C. 20250; phone 202-447-6a70.	3

(4) Inspection certificates shall cover only the quantity of onions that is being imported at a particular port of entry by a particular importer.

(5) Each inspection certificate issued with respect to any onions to be imported into the United States shall set forth, among other things:

(i) The date and place of inspection;

(ii) The name of the shipper, or applicant;

(iii) The commodity inspected;

(iv) The quantity of the commodity covered by the certificate;

(v) The principal identifying marks on the containers;

(vi) The railroad car initials and number, the truck and trailer license number, the name of the vessel, or other identification of the shipment; and

(vii) The following statement, if the facts warrant: Meets import requirements of 7 U.S.C. 608e-1.

(g) *Reconditioning prior to importation.* Nothing contained in this part shall be deemed to preclude any importer from reconditioning prior to importation any shipment of onions for the purpose of making it eligible for importation.

(h) *Definitions.* For the purpose of this section, "Onions" means all varieties of *Allium cepa* marketed dry, except dehydrated, canned or frozen onions, pickling onions in brine, onion sets, green onions or braided red onions. The term "U.S. No. 2," shall have the same meaning as set forth in the United States Standards for Grades of Bermuda-Granex-Grano Type Onions (§§ 51.3195-51.3209 of this title), United States Standards for Grades of Creole Onions (§§ 51.3955-51.3970 of this title), or in the United States Standards for Grades of Onions Other Than Bermuda-Granex-Grano and Creole Types (§§ 51.2830-51.2854 of this title), whichever is applicable to the particular variety, and variations thereof specified in this section. The term "moderately cured" means the onions are mature and are more nearly well cured than fairly well cured. Onions commonly referred to as "braided," that is, with tops, may be imported if they meet the grade and size requirements except for top length. Furthermore, braided red onions are exempt from such requirements. "Importation" means release from custody of the United States Bureau of Customs.

[42 FR 38384, July 28, 1977; 42 FR 40175, Aug. 9, 1977]

§ 980.117 Import regulations; onions.

(a) *Findings and determinations with respect to onions.*

(1) Under section 8e of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), it is hereby found that:

(i) Grade, size, quality, and maturity regulations have been issued regularly under Marketing Orders No. 958 and 959, both as amended;

(ii) During the past several years, grade, size, quality, and maturity regulations have been in effect pursuant to these orders during the period August through April;

(iii) The marketing of onions can be reasonably distinguished by the seasonal categories, i.e., late summer and early spring. The bulk of the late summer crop is harvested and placed in storage in late summer and early fall and marketed over a period of several months extending into the following spring. But the onions harvested from the early spring crop are generally marketed as soon as the onions are harvested. The marketing seasons for these crops overlap;

(iv) Concurrent grade, size, quality, and maturity regulations under the two marketing orders are expected in future seasons, as in the past.

(2) Therefore it is hereby determined that: Imports of onions during the August through approximately mid-March period are in most direct competition with the marketing of onions produced in designated counties in Idaho and in Malheur County, Oreg., covered by Order No. 958, as amended (7 CFR Part 958), and during the approximately mid-March through May period the marketing of imported onions is in most direct competition with onions produced in designated counties in South Texas covered by Order No. 959, as amended (7 CFR Part 959).

(b) *Grade, size, quality, and maturity requirements.* On and after the effective date hereof no person may import onions as defined herein unless they are inspected and meet the following requirements:

(1) During the August through approximately mid-March period of each marketing year, whenever onions

grown in designated counties in Idaho and Malheur County, Oreg., are regulated under Marketing Order No. 958, imported onions shall comply with the grade, size, quality, and maturity requirements imposed under that order.

(2) During the approximately mid-March through May period of each marketing year, whenever onions grown in designated counties in South Texas are regulated under Marketing Order No. 959, imported onions shall comply with the grade, size, quality and maturity requirements imposed under that order.

(c) *Minimum quantity exemption.* Any importation which in the aggregate does not exceed 110 pounds (50 kilograms) may be imported without regard to the provisions of this section.

(d) *Plant quarantine.* Provisions of this section shall not supercede the restrictions or prohibitions on onions under the Plant Quarantine Act of 1912.

(e) *Designation of governmental inspection service.* The Federal or the Federal-State Inspection Service, Food Safety and Quality Service, U.S. Department of Agriculture, and the Fruit and Vegetable Division, Production and Marketing Branch, Canada Department of Agriculture, are designated as governmental inspection services for certifying the grade, size, quality, and maturity of onions that are imported into the United States under the provisions of Section 8e of the act.

(f) *Inspection and official inspection certificates.* (1) An official inspection certificate certifying the onions meet the U.S. import requirements for onions under section 8e (7 U.S.C. 608e-1), issued by a designated governmental inspection service and applicable to a specified lot is required on all imports of onions.

(2) Inspection and certification by the Federal or Federal-State Inspection Service will be available and performed in accordance with the rules and regulations governing certification of fresh fruits, vegetables and other products (7 CFR Part 2851). Each lot shall be made available and accessible for inspection as provided therein. Cost of inspection and certification shall be borne by the applicant.

(3) Since inspectors may not be stationed in the immediate vicinity of some smaller ports of entry, importers should make advance arrangements for inspection by ascertaining whether or not there is an inspector located at their particular port of entry. For all ports of entry where an inspection office is not located, each importer must give the specified advance notice to the applicable office listed below prior to the time the onions will be imported.

Ports	Office	Advance notice (days)
All Texas points	Officer-in-charge, 1301 West Expressway, Alamo, Tex. 78516. Phone 512-787-4091 or 512-787-6881.	1
All Arizona points	Officer-in-charge, P.O. Box 1614, Nogales, Ariz. 85621. Phone 602-287-4783.	1
All California points	Officer-in-charge, 784 South Central Ave., room 266, Los Angeles, Calif. 90021. Phone 213-688-2489.	3
All Hawaii points	Officer-in-charge, P.O. Box 22159, Pawaa Substation, Honolulu, Hawaii 96822. Phone 808-941-3071.	1
All Puerto Rico points	Officer-in-charge, P.O. Box 9112, Santurce, P.R. 00908. Phone 809-783-2230 or 809-783-4116.	2
New York City, N.Y.	Officer-in-charge, room 28A, Hunts Point Market, Bronx, N.Y. 10474. Phone 212-991-7669 or 212-991-7668.	1
New Orleans, La	Officer-in-charge, 5027 U.S. Postal Service Bldg., 701 Loyola Ave., New Orleans, La. 70113. Phone 504-589-6741 or 504-589-6742.	1
Miami, Fla	Officer-in-charge, 1350 Northwest 12th Ave., room 530, Miami, Fla. 33136. Phone 305-324-6116 or 305-324-6117.	1
All other Florida points	Officer-in-charge, P.O. Box 1232, Winter Haven, Fla. 33880. Phone 813-294-3511, extension 33.	1
All other points	Chief, Fresh Products Branch, Fruit and Vegetable Quality Division, Food Safety and Quality Service, Washington, D.C. 20250. Phone 202-447-5870.	3

(4) Inspection certificates shall cover only the quantity of onions that is being imported at a particular port of entry by a particular importer.

(5) Each inspection certificate issued with respect to any onions to be imported into the United States shall set forth, among other things:

(i) The date and place of inspection; (ii) the name of the shipper, or applicant; (iii) the commodity inspected; (iv) the quantity of the commodity covered by the certificate; (v) the principal identifying marks on the containers; (vi) the railroad car initials and number, the truck and trailer license number, the name of the vessel, or other identification of the shipment; and (vii) the following statement, if the facts warrant: Meets import requirements of 7 U.S.C. 608e–1.

(g) *Reconditioning prior to importation.* Nothing contained in this part shall be deemed to preclude any importer from reconditioning prior to importation any shipment of onions for the purpose of making it eligible for importation.

(h) *Definitions.* For the purpose of this section, "Onions" means all varieties of *Allium cepa* marketed dry, except dehydrated, canned, or frozen onions, pickling onions in brine, onion sets, green onions or braided red onions. The term "U.S. No. 2" shall have the same meaning as set forth in the U.S. Standards for Grades of Bermuda-Granex-Grano Type Onions (7 CFR 2851.3195–2851.3209), U.S. Standards for Grades of Creole Onions (7 CFR 2851.3955–2851.3970), or in the U.S. Standards for Grades of Onions Other Than Bermuda-Granex Grano and Creole Types (7 CFR 2851.2830–2851.2854), whichever is applicable to the particular variety, and variations thereof specified in this section. The term "moderately cured" means the onions are mature and are more nearly well cured than fairly well cured. "Importation" means release from custody of the U.S. Bureau of Customs.

[43 FR 5500, Feb. 9, 1978]

§ 980.212 Import regulations; tomatoes.

(a) *Findings and determinations with respect to fresh tomatoes.* (1) Under Section 8e of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), it is hereby found that:

(i) Grade, size, quality and maturity regulations have been issued from time to time under Marketing Order No. 966, as amended;

(ii) The marketing of fresh tomatoes from Florida covered by Marketing Order No. 966, as amended, can reasonably be expected to occur during the months of October through June;

(2) Therefore, it is hereby determined that imports of fresh tomatoes during the months of October through June are in most direct competition with the marketing of fresh tomatoes produced in Florida covered by Marketing Order No. 966, as amended.

(b) *Grade, size, quality and maturity requirements.* On and after the effective date hereof no person may import fresh tomatoes except pear shaped, cherry, hydroponic and greenhouse tomatoes as defined herein, or tomatoes to be used in noncommercial outlets for experimental purposes, unless they are inspected and meet the following requirements;

(1) During the October–June period of each marketing year, whenever tomatoes grown in Florida are regulated under Marketing Order No. 966, imported tomatoes shall comply with the grade, size, quality and maturity requirements imposed under that order.

(2) Prior to importation of tomatoes to be used in noncommercial outlets for experimental purposes, the importer shall apply for and obtain from the Vegetable Branch, Fruit and Vegetable Division, AMS, U.S. Department of Agriculture, Washington, D.C. 20250, an approved Certificate for Special Purpose Shipment, complete Part I and comply with all procedures specified thereon. A separate certificate is required for each shipment. Three copies of the certificate shalll accompany shipment, of which one copy shall be surrendered to the Federal or Federal-State Inspector of the U.S. Department of Agriculture at the port of entry.

(3) Upon completion of shipment receiver making final disposition of the tomatoes shall complete Part II of the Certificate. Importer shall be responsible for the return, within 10 days, of a signed copy of the certificate to the

Chief, Vegetable Branch, Fruit and Vegetable Division, AMS, U.S. Department of Agriculture, Washington, D.C. 20250, certifying that the tomatoes were used for the purpose specified thereon.

(c) *Minimum quantity exemption.* Any importation which in the aggregate does not exceed 60 pounds may be imported without regard to the provisions of this section.

(d) *Plant quarantine.* Provisions of this section shall not supersede the restrictions or prohibitions on tomatoes under the Plant Quarantine Act of 1912.

(e) *Designation of Governmental inspection service.* The Federal or the Federal-State Inspection Service, Food Safety and Quality Service, United States Department of Agriculture, and the Fruit and Vegetable Division, Production and Marketing Branch, Canada Department of Agriculture, are designated as governmental inspection services for certifying the grade, size, quality and maturity of tomatoes that are imported into the United States under the provisions of Section 8e of the act.

(f) *Inspection and official inspection certificates.* (1) An official inspection certificate certifying the tomatoes meet the United States import requirements for tomatoes under Section 8e (7 U.S.C. 608e-1), issued by a designated governmental inspection service and applicable to a specified lot is required on all imports of fresh tomatoes.

(2) Inspection and certification by the Federal or Federal-State Inspection Service will be available and performed in accordance with the rules and regulations governing certification of fresh fruits, vegetables and other products (7 CFR Part 2851). Each lot shall be made available and accessible for inspection as provided therein. Cost of inspection and certification shall be borne by the applicant.

(3) Since the inspectors may not be stationed in the immediate vicinity of some smaller ports of entry, importers should make advance arrangements for inspection by ascertaining whether or not there is an inspector located at their particular port of entry. For all ports of entry where an inspection office is not located, each importer must give the specified advance notice to the applicable office listed below prior to the time the tomatoes will be imported.

Ports	Office	Advance notice (days)
All Texas points	Officer-in-charge, 1301 West Expressway, Alamo, Tex. 78516, phone 512-787-4091 or 6881.	1
All Arizona points	Officer-in-charge, P.O. Box 1614, Nogales, Ariz. 85621, phone 602-287-2902.	1
All California points	Officer-in-charge, 784 South Central Ave., room 266, Los Angeles, Calif. 90021, phone 213-688-2489.	1
All Hawaii points	Officer-in-charge, P.O. Box 22159, Pawaa substation, Honolulu, Hawaii 96822, phone 808-941-3071.	1
All Puerto Rico points	Officer-in-charge, P.O. Box 9112, Santurce, P.R. 00908, phone 809-783-2230 or 4116.	2
New York, N.Y.	Officer-in-charge, room 28A, Hunts Point Market, Bronx, N.Y. 10474, phone 212-991-7669 or 7668.	1
New Orleans, La	Officer-in-charge, 5027 U.S. Postal Service Bldg., 701 Loyola Ave., New Orleans La. 70113, phone 504-589-6741 or 6742.	1
Miami, Fla.	Officer-in-charge, 1350 Northwest 12th Ave., room 530, Miami, Fla. 33136, phone 305-324-6116 or 6117.	1
All other Florida points.	Officer-in-charge, P.O. Box 1232, Winter Haven, Fla. 33880, phone 813-294-3511, ext. 33.	1
All other points	Chief, fresh products branch, fruit and vegetable quality division, food safety and quality service, Washington, D.C. 20250, phone 202-447-5870.	3

(4) Inspection certificates shall cover only the quantity of tomatoes that is being imported at a particular port of entry by a particular importer.

(5) Each inspection certificate issued with respect to any tomatoes to be imported into the United States shall set forth, among other things:

(i) The date and place of inspection;
(ii) The name of the shipper, or applicant;
(iii) The commodity inspected;
(iv) The quantity of the commodity covered by the certificate;
(v) The principal identifying marks on the containers;
(vi) The railroad car initials and number, the truck and trailer license number, the name of the vessel, or other identification of the shipment; and
(vii) The following statement, if the facts warrant: Meets import requirements of 7 U.S.C. 608e-1.

(g) *Reconditioning prior to importation.* Nothing contained in this part shall be deemed to preclude any importer from reconditioning prior to importation any shipment of tomatoes for the purpose of making it eligible for importation.

(h) *Definitions.* For the purpose of this section, "Importation" means release from custody of the United States Bureau of Customs. "Cherry tomatoes" means cerasiform types commonly referred to as "cherry tomatoes." "Pear shaped tomatoes" means elongated types, commonly referred to as pear shaped or paste tomatoes and include San Marzano, Red Top and Roma varieties. "Hydroponic tomatoes" means tomatoes grown in solution without soil. "Greenhouse tomatoes" means tomatoes grown indoors. The terms relating to grade and size, as used herein, shall have the same meaning as when used in the U.S. Standards for Grades of Fresh Tomatoes (7 CFR 2851.1855 to 2851.1877; Title 7, Chapter I, Part 51 was redesignated Title 7, Chapter 28, Part 2851 on June 27, 1977).

[42 FR 55192, Oct. 14, 1977, as amended at 43 FR 3349, Jan. 25, 1978]

PART 981—ALMONDS GROWN IN CALIFORNIA

Subpart—Order Regulating Handling

Definitions

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AUTHORITY: Secs. 1-19, 48 Stat. 31, as amended; 7 U.S.C. 601-674.

SOURCE: 35 FR 11372, July 16, 1970, unless otherwise noted.

Subpart—Order Regulating Handling

DEFINITIONS

§ 981.1 Secretary.

"Secretary" means the Secretary of Agriculture of the United States, or any other officer or employee of the United States Department of Agriculture who is, or who may be, authorized to perform the duties under this part of the Secretary of Agriculture of the United States.

§ 981.2 Act.

"Act" means Public Act No. 10, 73d Congress, as amended and as reenacted and amended by the Agricultural Marketing Agreement Act of 1937, as amended (48 Stat. 31, as amended; 62 Stat. 1247; 63 Stat. 282, 1051; 7 U.S.C. 601 et seq.).

§ 981.3 Person.

"Person" means an individual, partnership, corporation, association, or any other business unit.

§ 981.4 Almonds.

"Almonds" means (unless otherwise specified) all varieties of almonds (except bitter almonds), either shelled or unshelled, grown in the State of California, and for the purposes of research includes almond shells and hulls.

[41 FR 26852, June 30, 1976]

§ 981.5 Unshelled almonds.

"Unshelled almonds" means almonds the kernels of which are contained in the shell.

§ 981.6 Shelled almonds.

"Shelled almonds" mean raw or roasted almonds after the shells are removed and includes blanched, diced, sliced, slivered, cut, halved, or broken almonds, or any combination thereof. Additional almond products may be included by the Secretary from time to time upon consideration of a recommendation from the Board or other pertinent information.

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§ 981.7 Edible kernel.

"Edible kernel" means a kernel, piece, or particle of almond kernel that is not inedible.

[41 FR 26852, June 30, 1976]

§ 981.8 Inedible kernel.

"Inedible kernel" means a kernel, piece, or particle of almond kernel with any defect scored as serious damage, or damage due to mold, gum, shrivel, or brown spot, as defined in the United States Standards for Shelled Almonds, or which has embedded dirt not easily removed by washing. This definition may be modified by the Board with the approval of the Secretary: *Provided,* That the Board shall submit any recommendation for modification to the Secretary not later than August 1.

[41 FR 26852, June 30, 1976]

§ 981.9 Kernel weight.

"Kernel weight" means the weight of kernels, including pieces and particles, regardless of whether edible or inedible, contained in any lot of almonds, unshelled or shelled.

§ 981.10 Almonds received for his own account.

"Almonds received for his own account" means all almonds which are received by a handler (including all almonds of his own production), except those which are received by him for storage or processing for the account of any other person and with respect to which such handler performs no handling function.

§ 981.11 Area of production.

"Area of production" means the State of California.

§ 981.12 Grower.

"Grower" is synonymous with "producer" and means any person engaging, in a proprietary capacity, in the commercial production of almonds.

§ 981.13 Handler.

"Handler" means any person handling almonds during any crop year, except that such term shall not include either a grower who sells only almonds of his own production at retail at a roadside stand operated by him, or a person receiving almonds from growers and other persons and delivering these almonds to a handler.

[41 FR 26852, June 30, 1976]

§ 981.14 Cooperative handler.

"Cooperative handler" means any handler which is a cooperative marketing association of growers regardless of where or under what laws it may be organized.

§ 981.15 Almond product.

"Almond product" means any edible preparation other than those included under the definition of "shelled almonds," manufactured entirely or partially from raw shelled almonds, and nut mixtures containing shelled or unshelled almonds.

§ 981.16 To handle.

"To handle" means to use almonds commercially of own production or to sell, consign, transport, ship (except as a common carrier of almonds owned by another person) or in any other way to put into channels of trade, either within the area of production or from such area to points outside thereof, or to receive as the first receiver thereof at any point of entry in the United States and Puerto Rico, almonds which have been exported therefrom and are submitted for reentry or are reentered free of duty: *Provided,* That sales or deliveries by growers to handlers within the area of production shall not be considered as handling.

[35 FR 11372, July 16, 1970, as amended at 37 FR 3984, Feb. 25, 1972]

§ 981.17 Inspection agency.

"Inspection agency" means the Federal-State Inspection Service or, when specifically designated, the Federal Inspection Service.

§ 981.18 Settlement weight.

"Settlement weight" means the actual gross weight of any lot of almonds received for his own account by any handler, less adjustments as follows:

(a) For weight of containers,
(b) For excess moisture, and
(c) For trash or other foreign material of any kind.

§ 981.19 Crop year.

"Crop year" means the 12 months from July 1 to the following June 30 inclusive.

§ 981.20 Handler carryover.

"Handler carryover" as of any given date means all almonds, wherever located, then held by handlers for their own accounts (whether or not sold) but not including any almond products.

[41 FR 26852, June 30, 1976]

§ 981.21 Trade demand.

"Trade demand" means the quantity of almonds (kernel weight basis) which commercial distributors and users such as the wholesale, chain store, confectionery, bakery, ice cream, and nut salting trades will acquire from all handlers during a crop year for distribution in the United States, Puerto Rico, and the Canal Zone: *Provided*, That in recommending the salable and reserve percentages for any crop year, the Board may include, with the approval of the Secretary, export outlets for almonds.

[41 FR 26852, June 30, 1976]

§ 981.21a Salable almonds.

"Salable almonds" means those almonds which are free to be handled pursuant to any salable percentage established by the Secretary pursuant to § 981.47 or § 981.48 and, in the absence of a reserve percentage being established for a crop year, all almonds received by handlers for their own accounts during that crop year.

§ 981.21b Reserve almonds.

"Reserve almonds" means those almonds which must be withheld from handling in satisfaction of a reserve obligation arising from application of a reserve percentage established by the Secretary pursuant to § 981.47 or § 981.48.

§ 981.22 Board.

"Board" means the Almond Board of California which is the administrative agency established by this subpart.

[41 FR 26852, June 30, 1976]

§ 981.23 Part and subpart.

"Part" means the order regulating the handling of almonds grown in the State of California, and all rules, regulations, and supplementary orders issued thereunder, and the aforesaid order shall be a "subpart" of such part.

ALMOND BOARD OF CALIFORNIA

§ 981.30 Establishment.

A Board of ten members, with an alternate member for each such member, is hereby established.

§ 981.31 Membership representation.

Two members and an alternate for each member shall be selected from nominees submitted by each of the following groups designated in paragraphs (a) through (d) of this section, or from among other qualified persons belonging to such groups; and one member and an alternate member shall be selected from nominees submitted by each of the following groups designated in paragraphs (e) and (f) of this section, or from among other qualified persons belonging to such groups:

(a) The cooperative handlers;
(b) All handlers, other than cooperative handlers;
(c) Those growers who market their almonds through cooperative handlers;
(d) Those growers who market their almonds through other than cooperative handlers;
(e) The group of cooperative handlers or the group of handlers other than cooperative handlers whichever during that part of the then current crop year through March 31 received for their own account more than 50 percent of the almonds delivered by growers; and
(f) Those growers whose almonds were marketed during that period of the then current crop year through March 31, through the handler group

specified in paragraph (e) of this section.

§ 981.32 Nominations.

(a) *Method.* Nominees for the respective member and alternate member positions shall be chosen by ballot delivered to the Board. Nominees chosen as provided herein shall be submitted by the Board to the Secretary on or before May 20 of each year together with such related information as he may require. If a nomination for any board member or alternate is not received by the Secretary on or before May 20, he may select such member or alternate from persons belonging to the group to be represented, without nomination. The Board shall mail to all handlers and growers, other than cooperative, of record, the required ballots with all necessary voting information, including the names of incumbents willing to accept renomination, and, to such growers the name of any person proposed for nomination in a petition signed by at least 15 such growers and filed with the Board on or before April 20. Distribution of ballots shall be announced by press releases, furnishing pertinent information on balloting, issued by the Board through newspapers and other publications having general circulation in the almond producing areas.

(b) *Voting.* (1) Nominees for each member and alternate member position shall be voted upon separately by the group proposing them. The handler or grower group which is determined to be eligible for additional representation pursuant to § 981.31 (e) and (f), respectively, shall nominate such representatives in the same manner prescribed for choosing other nominees.

(2) Each handler may vote for a nominee for each position representing the group to which he belongs. Each handler vote shall be weighted by the quantity of almonds (kernel weight basis computed to the nearest whole ton) handled for his own account through March 31 of the crop year in which nominations are made. The nominee for each position shall be the person receiving the highest weighted vote for the position.

(3) Growers who market their almonds through cooperative handlers shall vote through their respective organizations. Each cooperative shall cast a vote for nominees for each position representing the cooperative grower group and such ballots shall be weighted by the number of growers who are members of, or under contract with, such cooperative. The nominee for each position shall be the person receiving the highest weighted vote for that position.

(4) Growers who market their almonds through other than cooperative handlers shall each have one equal vote. The nominees for each position representing such grower group shall be the person receiving the highest number of votes for that position.

§ 981.33 Selection and term of office.

Members and their respective alternates shall be selected annually for each group from nominees submitted for that group or from among other qualified persons by the Secretary for a term of one year beginning June 10 and shall serve until their respective successors are selected and qualified.

§ 981.34 Qualification.

Any person selected as a member or alternate of the Board, shall qualify by filing a written acceptance of his appointment with the Secretary or his designated representative. Any member or alternate who, at the time of his selection, was a member of or employed by a member of the group which nominated him shall, upon ceasing to be such member or employee, become disqualified to serve further and his position on the Board shall be deemed vacant.

§ 981.35 Alternates.

An alternate for a member for the Board shall act in the place and stead of such member (a) in his absence, or (b) in the event of his death, removal, resignation or disqualification, until a successor for his unexpired term has been selected and has qualified.

§ 981.36 Vacancy.

To fill any vacancy occasioned by the death, removal, resignation, or dis-

qualification of any member or alternate of the Board, a successor for his unexpired term shall be selected by the Secretary after consideration of recommendations which may be submitted by members of the group for which such vacancy exists, unless such selection is deemed unnecessary by the Secretary.

§ 981.37 Expenses.

The members of the Board shall serve without compensation, but shall be allowed their necessary expenses.

§ 981.38 Powers.

The Board shall have the following powers:

(a) To administer the provisions of this part in accordance with its terms;

(b) To make rules and regulations to effectuate the terms and provisions of this part;

(c) To receive, investigate and report to the Secretary complaints of violations of this part; and

(d) To recommend to the Secretary amendments to this part.

§ 981.39 Duties.

The Board shall have, among other things, the following duties:

(a) To act as intermediary between the Secretary and any handler or grower;

(b) To keep minute books and records which will clearly reflect all of its acts and transactions, and such minute books and records shall be subject to examination by the Secretary at any time;

(c) To investigate the growing, shipping, and marketing conditions with respect to almonds and to assemble data in connection therewith;

(d) To furnish to the Secretary such available information as may be deemed pertinent or as he may request;

(e) To appoint such employees as it may deem necessary and to determine the salaries, define the duties and fix the bonds of such employees; and

(f) To cause the books of the Board to be audited by one or more competent certified public accountants at least once for each crop year, and at such other times as the Board may deem necessary or as the Secretary may request; and the report of each such audit shall show, among other things, the receipt and expenditure of funds pursuant hereto: and to file with the Secretary three copies of all audit reports made.

§ 981.40 Procedure.

(a) *Organization and rules.* The members of the Board shall select a chairman from their membership. The Board shall select such other officers and adopt such rules for the conduct of its business as it may deem advisable. The Board shall give to the Secretary or his designated agent and representatives the same notice of meetings of the Board as is given to members of the Board.

(b) *Quorum.* All decisions of the Board, except where otherwise specifically provided, shall be by a majority vote of the members present. The presence of six members shall be required to constitute a quorum.

(c) *Voting by mail or telegram.* The Board may vote by mail or telegram upon written notice to all members, or alternates acting in their place, including in the notice a statement of a reasonable time not to exceed 10 days in which a vote by mail or telegram must be received by the board manager for counting: *Provided,* That voting by mail or telegram shall not be permitted at any assembled meeting of the Board. When any proposition is submitted for voting by mail or telegram, one dissenting vote or failure to vote shall prevent its adoption by that method.

(d) *Right of the Secretary.* The members of the Board (including successors or alternates), and any agent or employee appointed or employed by the Board, shall be subject to removal or suspension by the Secretary at any time. Each and every order, regulation, decision, determination, or other act of the Board shall be subject to the continuing right of the Secretary to disapprove of the same at any time, and, upon such disapproval, shall be deemed null and void except as to acts done in reliance thereon or in compliance therewith.

(e) *Additional voting requirements.* Adoption of recommendations by the

Board with respect to projects pursuant to § 981.41 involving production research, marketing research and development projects, and marketing promotion including paid advertising and crediting the pro rata expense assessment obligation of handlers with such portion of their direct expenditures for marketing promotion including paid advertising, shall require at least seven affirmative votes.

[35 FR 11372, July 16, 1970, as amended at 37 FR 3984, Feb. 15, 1972]

RESEARCH

§ 981.41 Research and development.

(a) *General.* The Board, with the approval of the Secretary, may establish or provide for the establishment of projects involving production research, marketing research and development projects, and marketing promotion including paid advertising, designed to assist, improve, or promote the marketing, distribution, consumption or efficient production of almonds. The Board may also provide for crediting the pro rata expense assessment obligations of a handler with such portion of his direct expenditure for such marketing promotion including paid advertising as may be authorized. The expenses of such projects shall be paid from funds collected pursuant to § 981.81(a) or credited pursuant to paragraph (c) of this section.

(b) *Authorization.* If, on the basis of a Control Board recommendation pursuant to § 981.40(e) with respect to projects pursuant to this section, and appertaining rules and regulations established by the Secretary on recommendation of the Board, and other available information, the Secretary concurs that such activities should be permitted, he shall authorize such activities.

(c) *Creditable expenditures.* The Board, with the approval of the Secretary, may provide for crediting all or any portion of a handler's direct expenditures for marketing promotion including paid advertising, that promotes the sale of almonds, almond products or their uses. No handler shall receive credit for any allowable direct expenditures that would exceed the total of his assessment obligation which is attributable to that portion of his assessment designated for marketing promotion including paid advertising. Such expenditures may include, but are not limited to, money spent for advertising space or time in newspaper, magazines, radio, television, transit, and outdoor media, including the actual standard agency commission costs not to exceed 15 percent: *Provided,* That, with respect to paid advertising, advertising production costs, preparation expenses, travel allowances, and other expenses not directly connected with paid space or time, and costs relating to pretesting of advertising, test marketing, directory advertising, point of sales materials, premiums, and trade promotion allowances shall not be eligible for credit against a handler's assessment obligation.

(d) *Promotion guidelines.* All marketing promotion activity engaged in by the Board, including paid advertising, shall be subject to the following terms and conditions:

(1) No marketing promotion, including paid advertising shall refer to any private brand, private trademark or private trade name;

(2) No promotion or advertising shall disparage the quality, use, value, or sale of like or any other agricultural commodity or product, and no false or unwarranted claims shall be made in connection with the product;

(3) No promotion or advertising shall be undertaken without reason to believe that returns to producers will be improved by such activity; and

(4) Upon conclusion of each activity, but at least annually, the Board shall summarize and report the results of such activity to its members and to the Secretary.

(e) *Rules and regulations.* Before any project involving marketing promotion, including paid advertising and the crediting of the pro rata expense assessment obligation of handlers is undertaken pursuant to this section, the Secretary, after recommendation by the Board, shall prescribe appropriate rules and regulations as are necessary to effectively regulate such activity.

[37 FR 3984, Feb. 25, 1972]

QUALITY CONTROL

§ 981.42 Quality control.

(a) *Incoming.* Except as provided in this paragraph, each handler shall cause to be determined, through the inspection agency, and at handler expense, the percent of inedible kernels in each variety received by him and shall report the determination to the Board. The quantity of inedible kernels in each variety in excess of two percent of the kernel weight received, shall constitute a weight obligation to be accumulated in the course of processing and shall be delivered to the Board, or Board accepted crushers, feed manufacturers, or feeders. The Board, with the approval of the Secretary, may change this percentage for any crop year, may authorize additional outlets, may exempt bleaching stock from inedible kernel determination or obligation and may establish rules and regulations necessary and incidental to the administration of this provision, including the method of determining inedible kernel content and satisfaction of the disposition obligation. The Board for good cause may waive portions of obligations for those handlers not generating inedible material from such sources as blanching or manufacturing.

(b) *Outgoing.* For any crop year the Board may establish, with the approval of the Secretary, such minimum quality and inspection requirements applicable to almonds to be handled or to be processed into manufactured products, as will contribute to orderly marketing or be in the public interest. In such crop year, no handler shall handle or process almonds into manufactured items or products unless they meet the applicable requirements as evidenced by certification acceptable to the Board. The Board, with the approval of the Secretary, may establish rules and regulations necessary and incidental to the administration of this provision.

[41 FR 26853, June 30, 1976, as amended at 41 FR 53651, Dec. 8, 1976]

VOLUME REGULATION

§ 981.45 General.

In order to effectuate the declared policy of the act, no handler shall handle almonds except in accordance with the terms and conditions of this part.

§ 981.46 Withholding reserve.

When a reserve percentage has been fixed for any crop year, as hereinafter provided, no handler shall handle almonds except on condition that he comply with the requirements in respect to withholding reserve almonds and the prescribed disposition thereof.

§ 981.47 Method of establishing salable and reserve percentages.

Whenever the Secretary finds, from the recommendations and supporting information supplied by the Board or from any other available information, that to designate the percentages of almonds during any crop year which shall be salable almonds and reserve almonds would tend to effectuate the declared policy of the act, he shall designate such percentages. Except as provided in § 981.50 the salable and reserve percentages shall each be applied to the kernel weight of almonds received by a handler for his own account during the crop year. In establishing such salable and reserve percentages, the Secretary shall give consideration to the ratio of estimated trade demand (either domestic or domestic plus export, less the handler carryover available to satisfy trade demand plus the desirable handler carryover at the end of the crop year) to the estimated production of marketable almonds (all expressed in terms of kernel weight) or the allocation quantity (marketable production plus almonds diverted to oil or feed when eligible for reserve satisfaction) whichever is applicable; the recommendation submitted to him by the Board; and such other information as he deems appropriate. The total of the salable and reserve percentages established each crop year shall equal 100 percent.

[41 FR 26853, June 30, 1976]

§ 981.48 Increase of salable percentage.

Upon request filed prior to May 15 by the Board or, if the Board should fail to request, by two or more handlers who have handled at least 15 percent of all almonds handled in the preceding crop year, and after findings of fact (based upon a revision of the estimates required under § 981.49 and other pertinent information) that the quantity of salable almonds is not sufficient to satisfy trade demand and desirable carryover requirements for the crop year, the Secretary may increase the salable percentage. Such findings shall be made in the manner specified in § 981.47.

§ 981.49 Board estimates and recommendations.

To aid the Secretary in fixing the salable and reserve percentages, the Board shall furnish to the Secretary, not later than August 1, the following estimates (kernel weight basis) and recommendations for the crop year, each of which, or any later revisions thereof, shall be adopted by the affirmative vote of at least six members:

(a) The quantity of marketable almonds to be produced;

(b) The handler carryover and the reserve inventory as of July 1;

(c) The desirable handler carryover and the probable reserve inventory at the end of the crop year;

(d) The trade demand, taking into consideration anticipated imports, economic conditions and the anticipated market price (within the limitations of the act);

(e) The recommended salable and reserve percentages to be established; and

(f) The recommended percentage of reserve almonds that may be exported pursuant to § 981.66.

The Board shall also furnish to the Secretary a complete report of the proceedings of the Board meeting at which the recommended salable and reserve percentages were considered. If, for any reason, the Board fails to make these estimates or to recommend to the Secretary salable and reserve percentages as required hereby, reports representing the views of members with respect to such matters may be submitted to the Secretary who may act on the basis of such reports or other information available to him.

[35 FR 11372, July 16, 1970, as amended at 41 FR 26853, June 30, 1976]

§ 981.50 Reserve obligation.

Whenever salable and reserve percentages are in effect for a crop year, each handler shall withhold from handling a quantity of almonds having a kernel weight equal to the reserve percentage of the kernel weight of all almonds such handler receives for his own account during the crop year: *Provided,* That, any quantity of almonds delivered to outlets such as poultry or animal feed or crushing into oil, in a manner permitting accountability to the Board, shall not be included in such receipts. The quantity of almonds hereby required to be withheld from handling shall constitute, and may be referred to as the "reserve" or "reserve obligation" of a handler. The almonds handled as salable almonds by any handler, in accordance with the provisions of this part, shall be deemed to be that handler's quota fixed by the Secretary within the meaning of section 8a(5) of the act.

[41 FR 26853, June 30, 1976]

§ 981.51 Requirements for reserve.

Each handler may satisfy his reserve obligation with such almonds specified in the terms of the agency agreement authorized in § 981.67, including all applicable inspection and certification requirements. Any handler who does not become an agent may receive credit by similarly delivering almonds to the Board or its designees. These requirements may be established by the Board, with the approval of the Secretary, and from time to time so modified, and may include grade requirements for reserve almonds delivered to human consumption outlets.

[41 FR 26853, June 30, 1976]

§ 981.52 Holding requirement and delivery.

Each handler shall, at all times, hold in his possession or under his control, in proper storage for the account of

the Board, the quantity of almonds necessary to meet his reserve obligation less: (a) Any quantity which was disposed of by him pursuant to § 981.67; and (b) any quantity for which he is otherwise relieved by the Board of responsibility to so hold almonds. Upon demand of the Board reserve almonds shall be delivered to the Board f.o.b. handler's warehouse or point of storage, except that the Board shall not make such demand upon a handler with respect to reserve almonds for which he has agreed to undertake disposition pursuant to § 981.67. Any handler who does not act as agent for the Board in the disposition of reserve almonds shall be subject to the applicable inspection and certification requirements prescribed by the Board pursuant to § 981.67.

[41 FR 26853, June 30, 1976]

§ 981.54 Payment to handlers for services rendered.

The Board may pay handlers for necessary services rendered by them in connection with almonds eventually disposed of directly by the Board as reserve including but not limited to storing, shelling, sorting, bleaching, grading, packaging, fumigating, and other services in accordance with such schedule of payments and under such conditions as may be established by the Secretary after recommendation of the Board.

§ 981.55 Interhandler transfers.

Any handler may, upon notice to and under the supervision and direction of the Board, transfer almonds or reserve credits to another handler. Any such transfers shall be accounted for in such manner that the reserve obligation and assessments on the combined transactions of the participating handlers shall be fully met and such reserve withholding obligation and assessments may be divided between such handlers in accordance with their arrangements subject to approval of the Board.

§ 981.56 Assistance of Board in accounting for reserve.

The Board, on written request, may assist handlers in accounting for their reserve obligations and may aid any handler in acquiring almonds to meet any deficiency in his reserve.

§ 981.57 Application of salable and reserve percentages after end of crop year.

The salable and reserve percentages established for any crop year shall continue in effect with respect to all almonds for which the reserve obligation has not been previously met, which are received for his own account or handled by any handler after the end of such crop year and before salable and reserve percentages are established for the succeeding crop year. After such percentages are established for the new crop year, the withholding requirements for all such almonds theretofore received for his own account or handled during that crop year shall be adjusted to the newly established percentages.

§ 981.59 Adjustment upon increase of salable percentage.

(a) Upon any increase in the salable percentage and corresponding decrease in the reserve percentage, the reserve obligation of each handler for the entire crop year to the effective date of such action shall be computed in accordance with such revised salable and reserve percentages. From the reserve almonds that may have been withheld by him and not yet disposed of, any handler authorized to act and acting as agent of the Board in disposing of reserve pursuant to § 981.66 shall be permitted to select, under the supervision and direction of the Control Board, the particular reserve almonds to be restored to his salable percentage, and such restoration shall be deemed to fulfill the obligation of the Board with respect to such increase.

(b) In the case of handlers who have not been authorized to dispose of their own reserves, and handlers who have terminated their agencies to dispose of their own reserves, prior to an increase in the salable percentage, insofar as practicable each such handler shall be permitted to select almonds from his own reserve to be restored to his salable quantity. In the event there are not sufficient reserve almonds held by

the Board at the time the salable percentage is increased, to make full restoration, as represented by the increase in the salable percentage, to all such handlers, the restoration to the salable quantities of the respective handlers shall be pro rata on the basis of certified kernel weight poundage of reserve contributed by said handlers during the crop year to the date of increase of the salable percentage: *Provided,* That restoration shall be made in a manner that will result, to the extent practicable, in a comparable percentage of reserve disposition for each such handler and that no handler shall receive almonds in excess of his contribution. Such restoration to the salable quantity shall be deemed to fulfill the obligation of the Board with respect to the increase in the salable percentage.

§ 981.60 Determination of kernel weight.

(a) *Almonds for which settlement is made on kernel weight.* All lots of almonds, whether shelled or unshelled, for which settlement is made on the basis of kernel weight shall be included in the total kernel weight for any handler at the settlement weight.

(b) *Almonds for which settlement is made on unshelled weight.* Any unshelled almonds for which settlement is made on the basis of unshelled weight shall be included in the total kernel weight for any handler at the settlement weight of such unshelled almonds multiplied by the applicable shelling ratio in accordance with § 981.62.

§ 981.61 Redetermination of kernel weight.

The Board, on the basis of reports by handlers, shall redetermine the kernel weight of almonds received by each handler for his own account during each crop year through each of the following dates: December 31, March 31, and June 30. Such redetermined kernel weight for each handler shall be the basis for computing his reserve obligation for the crop year through such dates, except that adjustment shall be made for almonds on which the obligation has been assumed by another handler. The redetermined kernel weight of each handler's receipts, as of any date during the crop year, shall be his carryover as of that date plus the weight of almonds delivered or used in products minus the carryover at the beginning of the crop year, the weight on which another handler has assumed the obligations, and the weight delivered to exempt outlets. Weights used in such computations for various classifications of almonds shall be: (a) For unshelled almonds, the kernel weight computed by application of shelling ratios authorized pursuant to § 981.62; (b) for shelled almonds, the net weight; and (c) for shelled almonds used in production of almond products, the net weight of such almonds.

[41 FR 26853, June 30, 1976]

§ 981.62 Varietal shelling ratios for unshelled almonds.

(a) The varietal shelling ratios applicable to unshelled almonds for determination of kernel weight are as follows:

Varieties	Percent
Jordanolo	60
Kapareil	60
Merced	60
Nonpareil	60
Thompson	60
Bigelow	55
Harpareil	55
Eureka	54
Baker	53
Trembath	53
Ballico	50
Davey	50
IXL	50
Long IXL	50
Ne Plus Ultra	50
Ruby	50
Smith (Smith's XL)	48
Lewelling (Lewelling's Prolific)	47
Walton	41
Drake	40
Emerald	40
Mission	40
Ripon	40
Standard	38
Sultana	36
Peerless	35
Tarragona	33
Hardshell	30
Bidwell	30

(b) Lots of unshelled almonds designated by a handler as unknown or unnamed varieties, or varieties of a name not listed in this section, also lots of mixed varieties (lots containing more

than 10 percent by weight of unshelled almonds which differ materially in shape or appearance from the predominant variety in the lot) shall be converted to kernel weight at 60 percent, unless the handler, at his expense, furnishes an inspection certificate applicable to the lot, issued by the inspection agency, showing the kernel weight of the lot. The shelling ratios in this section may be changed by the Secretary, and shelling ratios for other varieties may be specified by him, upon consideration of a Board recommendation and other available data.

[35 FR 11372, July 16, 1970, as amended at 41 FR 26853, June 30, 1976; 41 FR 27827, July 7, 1976]

DISPOSITION OF RESERVE

§ 981.65 Prohibition on the use or disposition of reserve almonds.

Except as provided in §§ 981.66 and 981.67, almonds that are withheld as reserve pursuant to the requirements of § 981.50 or are creditable in satisfaction of a reserve withholding obligation thereunder, shall not be used or disposed of by any handler or any other person.

§ 981.66 Conditions governing disposition of reserve.

(a) *General.* The Board shall have power and authority to sell or dispose of any and all reserve almonds withheld upon the best terms and at the highest return obtainable consistent with the ultimate complete disposition of reserve, subject to all conditions of this section.

(b) *Disposition of reserve for export.* Sales of reserve almonds for export to destinations outside the United States, Puerto Rico, and the Canal Zone shall be made only on execution of an agreement to prevent sale within or reimportation into the United States; and in case of export to Canada or Mexico, such almonds shall be sold only on the basis of a delivered price, duty paid.

(c) *Exclusion from salable normal trade channels.* No reserve almonds shall be sold in the United States, Puerto Rico, and the Canal Zone other than to governmental agencies or to charitable institutions for charitable purposes, except for diversion into almond oil, almond butter, poultry or animal feed, or into other channels which the Board finds are noncompetitive with existing normal markets for almonds, and with proper safeguards in each case to prevent such almonds thereafter entering the channels of trade in such normal markets.

(d) *Time restriction on disposition.* The Board shall not dispose of in export, or authorize the disposition in export, of more than 80 percent or such other percentage as the Secretary, upon recommendation of the Board or other information, may establish, of the reserve almonds of the applicable crop year. However, at any time prior to May 15 (except that such date may be extended by the Secretary to a date not later than June 30 upon recommendation of the Board or other information), the Board shall meet and review the disposition of reserve almonds. If the Board finds that the volume of reserve almonds released to export has been sold, or committed for sale, to such an extent that additional almonds could be disposed of in export, without materially affecting adversely the disposition of the oncoming crop, it may recommend an increase in the percentage to be released in export. Upon basis of the Board's finding and recommendation, or other information, the Secretary may increase the percentage. Any export percentage in effect pursuant to the foregoing shall continue to apply to the reserve almonds of the applicable crop year unless and until such percentage is increased or until all of the reserve almonds to which it applies have been disposed of. If pursuant to § 981.48, the reserve percentage is reduced during any crop year, each handler may dispose of the quantity released into export by the reserve and export percentages in effect prior to such reduction in the reserve percentage but his credit for any authorized reserve disposition shall not exceed his new reserve obligation. The Board may dispose of reserve almonds in non-competitive outlets in any crop year in which the quantity exceeds that needed for export or the export quantity is included in salable almonds.

(e) *Disposition after September 1.* Any reserve almonds remaining unsold as of September 1 shall be disposed of by the Board as soon as practicable through the most readily available reserve outlets. The date of September 1 herein specified may be extended to a later date by the Secretary, upon recommendation of the Board or other information.

(f) *Expenses.* Direct expenses incurred by the Board in the maintenance and disposition of reserve almonds shall be charged against the proceeds of sales of such almonds.

(g) *Distribution of proceeds.* Net proceeds from the disposition of reserve almonds by the Board shall be distributed to each handler in proportion to his relative share of such disposition in terms of creditable reserve kernel weight pursuant to § 981.51 or such other basis as the Board may adopt with the approval of the Secretary.

[35 FR 11372, July 16, 1970, as amended at 37 FR 3984, Feb. 25, 1972; 41 FR 26854, June 30, 1976]

§ 981.67 Disposition by handler.

Upon request of a handler, made prior to the delivery by him of any reserve to the Board in any crop year, the Board shall authorize such handler to act as agent of the Board, upon such reasonable terms and conditions, including inspection and certification requirements, as the Board may specify and subject to the conditions of § 981.66 in disposing of the reserve withheld from handling by such handler for that crop year. Any handler who is authorized to dispose of his reserve may, through arrangement with another handler dispose of such reserve through such other handler or, in lieu of disposition, may acquire credits for reserve disposition from another handler. In the first instance, the second handler shall also be subject to the conditions of § 981.66. It shall be the obligation of any handler authorized to dispose of such reserve to effect disposition thereof in accordance with all applicable requirements and conditions. The proceeds of such disposition shall be retained by the handler making the disposition, except that, in case he disposes of the reserve of another handler, the proceeds from that disposition shall be divided between the two handlers on the basis of a mutual agreement. Such authorization shall expire as of September 1 of the next crop year, and any reserve then remaining undisposed of by the handler shall be returned to the Board. If the date of September 1 specified in § 981.66(e) is extended, the date of September 1 shall be extended correspondingly. Any handler who has been authorized to act as agent of the Board in disposing of his reserve may terminate such agency as of April 1 of the particular crop year by giving written notice to the Board to that effect not later than the previous March 20, in which event such handler shall return to the Board, for disposition by it, all reserve almonds remaining in his possession. In case a handler does not terminate his agency as of April 1, he shall be required to continue to serve as such agent until September 1 of the next crop year. The Board shall not terminate such an agency prior to September 1 unless the agent violates the terms and conditions specified by the Board or other provisions of the order. During the period of such agency the Board, as principal, shall not dispose of the reserve withheld from handling by said agent. The Board, with the approval of the Secretary may prescribe such rules and regulations as are necessary to regulate disposition of reserve almonds including methods for crediting as reserve any salable almonds sold and delivered to reserve outlets.

Records and Reports

§ 981.70 Records and verification.

Each handler shall keep records which will clearly show the details of his receipts of almonds, withholdings, sales, shipments, inventories, reserve disposition, advertising and promotion activities, and other pertinent information in respect to his operations pursuant to the provisions of this part. Such records shall be retained by the handler for 2 years after the end of the crop year to which they apply. Each handler's premises shall be accessible to authorized representatives of the Board and the Secretary for examination and audit of the aforesaid

records and for inspection and observation of almonds. The Board shall make such checks of almonds or audits of each handler's records as it deems appropriate or are requested by the Secretary to insure that accurate information as required in this part is being furnished by handlers.

[35 FR 11372, July 16, 1970, as amended at 37 FR 3984, Feb. 25, 1972]

§ 981.71 Record of receipts.

For the purpose of establishing the reserve obligation and furnishing statistical information to the Board necessary for the conduct of its operations, each handler, on receiving almonds for his own account, shall issue to the person from whom so received a receipt therefor. At least two duplicates thereof shall be made at the time of issuance, one of which shall be retained by the handler as a part of his records and the other submitted to the Board as hereinafter provided. Such receipts shall be serially numbered and shall accurately show for each lot received, the identity of the handler, the name and address of the person from whom received, the number of containers in the lot, the variety, whether shelled or unshelled, and the settlement weight for each such variety. The character and amount of all adjustments deducted from the gross weight shall be shown with the gross weight on the receipt issued by the handler.

EDITORIAL NOTE: Section 981.71 was indefinitely suspended at 40 FR 4416, Jan. 30, 1975.

§ 981.72 Reports of receipts.

Each handler receiving almonds for his own account shall tabulate such receipts by varieties and shall submit reports thereof to the Board in such form and at such intervals as the Board may prescribe for all receipts issued by him. Such reports shall be accompanied by duplicate copies of the receipts issued pursuant to the provisions of § 981.71 for all almonds included in such report. The Board, after checking such reports in such manner as it deems desirable, shall determine in the manner specified in § 981.60 the kernel weight of the almonds so received.

EDITORIAL NOTE: The second sentence of § 981.72 was indefinitely suspended at 40 FR 4416, Jan. 30, 1975.

§ 981.73 Periodic reports.

On or before January 15, and April 15, and July 15 of each crop year, each handler shall file with the Board a written report, certified to the Board and to the Secretary by such handler as to its completeness and correctness, showing as of the close of business on December 31, March 31, and June 30, respectively, such information as may be prescribed by the Board for use in redetermination of kernel weight and marketing policy considerations.

§ 981.74 Other reports.

Upon the request of the Board, made with the approval of the Secretary, every handler shall furnish to the Board in such manner and at such times as it prescribes (in addition to such other reports as are specifically provided for in this part) such other information as will enable the Board to perform its duties and exercise its powers hereunder.

§ 981.75 Confidential nature of records and reports.

All information contained in handler records made available to the Board or the Secretary, or in reports to the Board, constituting a trade secret or disclosing the trade position, financial condition, or business operations of any handler shall be considered as confidential information. Such information received by the Board, shall be kept in the custody and under the control of one or more employees of the Board, who shall disclose such information to no person except the Secretary.

EXPENSES AND ASSESSMENTS

§ 981.80 Expenses.

The Board is authorized to incur such expenses as the Secretary may find are reasonable and likely to be incurred by it during each crop year, for the maintenance and functioning of the Board, including the accumulation

and maintenance of an operating reserve fund, and for such purposes as the Secretary may, pursuant to the provisions of this subpart, determine to be appropriate. The recommendation of the Board as to the expenses for each such year, together with all data supporting such recommendation, shall be submitted to the Secretary on or before August 1 of the crop year in connection with which such recommendation is made.

[35 FR 11372, July 16, 1970, as amended at 37 FR, 3984, Feb. 25, 1972]

§ 981.81 Assessment.

(a) *Requirement for payment.* Each handler shall pay to the Board on demand by the Board, from time to time, such sum less any amounts credited pursuant to § 981.41, based on such rate per pound of almonds, kernel weight basis, received by him for his own account (except as to receipts from other handlers on which assessments have been paid) as the Secretary finds is necessary to provide funds to meet the authorized board expenses and the operating reserve requirements, and establishes for the crop year. Upon redetermination of the kernel weight of almonds received by handlers for their own account as provided in § 981.61, such redetermined kernel weight for each handler, adjusted for receipts on which assessments have been paid, shall be the basis upon which he shall pay assessments. At any time during or after a crop year, the Secretary may increase the rate of assessments to apply to all such almonds during such crop year to secure sufficient funds to cover the expenses authorized by § 981.80 or by any later finding by the Secretary relative to the expenses of the Board, and such additional assessments shall be paid to the Board by each handler on demand. The payment of assessments for the maintenance and functioning of the Board may be required under this part throughout the period it is in effect irrespective of whether particular provisions thereof are suspended or become inoperative.

(b) *Refunds.* Any money collected as assessments for either the administrative (maintenance and functioning) or research activities of the Board and not used for the expenses of the applicable crop year, may be used in paying the Board's expenses of the first four months of the succeeding crop year. No later than the fifth month the amount not expended from assessments collected for administrative-research in the previous crop year shall be retained in the operating reserve fund. Any amounts, not credited pursuant to § 981.41 for a crop year may be used by the Board for its marketing promotion expenses of the succeeding crop year, and any unexpended portion of those amounts at the end of that crop year shall be retained in the marketing promotion portion of the operating reserve fund. Any funds in each portion of the operating reserve fund in excess of the level authorized pursuant to paragraph (c) of this section shall be refunded to handlers or used to reduce the assessment rate of the subsequent crop year, as the Board may determine. Each handler's share of a refund shall be the amount by which his payment of assessments exceeds his pro rata share of the two major classifications of Board expenses. For the purpose of computing any refund from the marketing promotion portion, each handler's payment of assessments shall include any amount credited to the handler pursuant to § 981.41. In lieu of a refund, each handler may have the amount due him credited to his assessment obligation of the crop year in which the amount would be refunded.

(c) *Reserves.* The Board may maintain an operating reserve fund consisting of an administrative-research portion and a marketing promotion portion. The amount in each portion shall not exceed approximately six-months' budget for the activity area or such lower amount as the Board may establish with the approval of the Secretary: *Provided,* That this limitation shall not restrict the temporary retention of excess funds for the purpose of stabilizing or reducing the assessment rate of a crop year. To the extent that funds from current crop year assessments are inadequate, funds in the operating reserve may be used for the authorized activities of the crop year. Funds so used, and not exceeding the six-month limitation, shall be replaced

to the extent practicable from assessments subsequently collected for the crop year.

(d) *Disposition of funds upon termination.* Any money collected from assessments hereunder and remaining unexpended in possession of the Board upon the termination of this part shall be distributed in such manner as the Secretary may direct.

[35 FR 11372, July 16, 1970, as amended at 37 FR 3984, Feb. 25, 1972; 41 FR 26854, June 30, 1976]

MISCELLANEOUS PROVISIONS

§ 981.85 Personal liability.

No member or alternate member of the Board, or any employee or agent thereof, shall be held personally responsible, either individually or jointly with others, in any way whatsoever, to any handler or any other person for errors in judgment, mistakes, or other acts either of commission or omission, as such member, alternate member, agent, or employee, except for acts of dishonesty.

§ 981.86 Separability.

If any provision of this subpart is declared invalid, or the applicability thereof to any person, circumstance, or thing is held invalid, the validity of the remainder hereof or the applicability thereof to any other person, circumstance, or thing shall not be affected thereby.

§ 981.87 Derogation.

Nothing contained in this subpart is, or shall be construed to be, in derogation or in modification of the rights of the Secretary or of the United States to exercise any powers granted by the act or otherwise, or, in accordance with such powers, to act in the premises whenever such action is deemed advisable.

§ 981.88 Duration of immunities.

The benefits, privileges, and immunities conferred upon any person by virtue of this subpart shall cease upon its termination except with respect to acts done under and during its existence.

§ 981.89 Agents.

The Secretary may, by a designation in writing, name any person, including any officer or employee of the United States Government, or name any bureau or division of the United States Department of Agriculture, to act as his agent or representative in connection with any of the provisions of this subpart.

§ 981.90 Effective time, suspension, or termination.

(a) *Effective time.* The provisions of this subpart, as well as any amendments to this subpart, shall become effective at such time as the Secretary may declare, and shall continue in force until terminated or suspended in one of the ways hereinafter specified in this section.

(b) *Suspension or termination*—(1) *Failure to effectuate policy of act.* The Secretary shall terminate or suspend the operation of any or all of the provisions of this subpart, whenever he finds that such provisions do not tend to effectuate the declared policy of the act.

(2) *When favored by growers.* The Secretary shall terminate the provisions of this subpart at the end of any crop year whenever he finds that such termination is favored by a majority of the growers of almonds who during the crop year have been engaged in the production for market of almonds in the State of California: *Provided,* That such majority have during such period produced for market more than 50 percent of the volume of such almonds produced for market within said State; but such termination shall be effected only if announced on or before June 1 of the then current crop year.

(3) *If enabling legislation is terminated.* The provisions of this subpart shall, in any event, terminate whenever the provisions of the act authorizing them cease to be in effect.

(c) *Proceedings after termination*—(1) *Designation of trustees.* Upon the termination of the provisions of this subpart, the members of the Board then functioning shall continue as joint trustees, for the purpose of liquidating the affairs of the Board, of all

funds and property then in the possession or under the control of the Board, including claims for any funds unpaid or property not delivered at the time of such termination. Action by said trusteeship shall require the concurrence of a majority of the said trustees.

(2) *Duties of trustees.* Said trustees shall continue in such capacity until discharged by the Secretary; shall, from time to time, account for all receipts and disbursements and deliver all property on hand, together with all books and records of the Board and the joint trustees, to such person as the Secretary may direct; and shall, upon request of the Secretary, execute such assignments or other instruments necessary or appropriate to vest in such person full title and right to all of the funds, property, and claims vested in the Board or the joint trustees pursuant thereto.

(3) *Obligations of persons other than board members and trustees.* Any person to whom funds, property, or claims have been transferred or delivered by the Board or its members, pursuant to this section, shall be subject to the same obligations imposed upon the members of the said Board and upon the said joint trustees.

§ 981.91 Effect of termination or amendment.

Unless otherwise expressly provided by the Secretary, the termination of this subpart or of any regulation issued pursuant to this subpart, or the issuance of any amendment to either thereof, shall not (a) affect or waive any right, duty, obligation, or liability which shall have arisen or which may thereafter arise in connection with any provision of this subpart or any regulation issued under this subpart, or (b) release or extinguish any violation of this subpart or of any regulation issued under this subpart, or (c) affect or impair any rights or remedies of the Secretary or of any other person, with respect to any such violation.

§ 981.92 Amendments.

Amendments to this subpart may be proposed, from time to time, by any person or by the Board.

NOTE: After January 1, 1979, "Budget of Expenses and Rate of Assessment" regulations (e.g., sections .300 through .399) and "Marketing percentage" regulations (e.g., sections .200 through .299) which are in effect for a year or less, will not be carried in the Code of Federal Regulations. For FEDERAL REGISTER citations affecting these regulations, see the "List of CFR Sections Affected" in this volume.

Subpart—Administrative Rules and Regulations

§ 981.401 Adjusted kernel weight.

(a) *Definition.* Except for Peerless bleaching stock, "adjusted kernel weight" shall mean the actual gross weight of any lot of almonds: Less weight of containers; less moisture of kernels in excess of five percent; less shells, if applicable; less processing loss of one percent for deliveries with less than 95 percent kernels; less trash or other foreign material. The adjusted kernel weight shall be determined by sampling certified by the inspection agency. The kernel weight of Peerless bleaching stock shall be 35 percent of the clean bleachable weight.

(b) *Computation.* Except for Peerless bleaching stock, the computation of adjusted kernel weight shall be in the manner shown in the following examples. The examples are based on the analysis of a 1,000 gram sample taken from a lot of almonds weighing 10,000 pounds with less than 95 percent kernels, and a 1,000 gram sample taken from a lot of almonds weighing 10,000 pounds with 95 percent or more kernels. The first computation example is for the lot with less than 95 percent kernels containing the following: Edible kernels, 530 grams; inedible kernels, 120 grams; foreign material, 350 grams, and moisture content of kernels, seven percent. Excess moisture is two percent. The second computation example is for the lot with 95 percent or more kernels containing the following: Edible kernels, 840 grams; inedible kernels, 120 grams; foreign material, 40 grams; and moisture content of kernels, seven percent. Excess moisture is two percent. The example computations are as follows:

	Computation No. 1		Computation No. 2	
	Deliveries with less than 95 percent kernels		Deliveries with 95 percent or more kernels	
	Percent of sample	Weight (pounds)	Percent of sample	Weight (pounds)
1. Actual gross weight of delivery		10,000		10,000
2. Percent of edible kernel weight	53.0		84.0	
3. Less weight loss in processing [1]	1.00		0	
4. Less excess moisture of edible kernels (excess moisture × line 2)	1.06		1.68	
5. Net percent shell out (line 2 – lines 3 and 4)	50.94		82.32	
6. Net edible kernels (line 5 × line 1)		5,094		8,232
7. Percent of inedible kernels (from sample)	12.0		12.0	
8. Less excess moisture of inedible kernels (excess moisture from sample × line 7)	.24		.24	
9. Net percent inedible kernels (line 7 – line 8)	11.76		11.76	
10. Total inedible kernels (line 9 × line 1)		1,176		1,176
11. Adjusted kernel weight (line 6 + line 10)		6,270		9,408

[1] Only applies to deliveries with less than 95 percent kernels.

[45 FR 68630, Oct. 16, 1980]

§ 981.408 Inedible kernel.

Pursuant to § 981.8, the definition of "inedible kernel" is modified to mean a kernel, piece, or particle of almond kernel with any defect scored as serious damage, or damage due to mold, gum, shrivel, or brown spot, as defined in the United States Standards for Shelled Almonds, or which has embedded dirt or other foreign material not easily removed by washing.

[49 FR 40788, Oct. 18, 1984, as amended at 50 FR 24175, Jan. 10, 1985]

§ 981.413 Roadside stand exemption.

The term "at retail at a roadside stand" as used in § 981.13 shall be defined to mean sales for home use and not for resale which are not in excess of 100 pounds net kernel weight to any one customer per day. Sales of almonds at certified farmers' markets in compliance with Section 1392 of the regulations of the California Department of Food and Agriculture shall be construed as "roadside" sales for the purpose of § 981.13 where these conditions are met.

[50 FR 30264, July 25, 1985]

§ 981.441 Crediting for marketing promotion including paid advertising.

(a) In order for a handler to receive credit for his marketing promotion expenditures, including paid advertising, against his pro rata expense assessment obligation pursuant to § 981.41(c), the Board shall determine that such expenditures meet the applicable requirements of this section.

(b) Each paid advertisement must be published, broadcast, or displayed and other marketing promotion activities must be conducted during the crop year for which credit is requested, except that a handler may receive credit up to a maximum of 40 percent of his total creditable advertising and promotion obligation as of the June 30 redetermination report for expenditures made for advertisements published, broadcast, or displayed and other marketing promotion activities conducted no later than December 31 of the subsequent crop year. A handler utilizing this extension shall: (1) File any required documentation with the Board no later than the following January 31, and (2) certify to the Board, at the time of the June 30 redetermination, his planned expenditures during the extension period.

(c) The following requirements shall apply to crediting for paid advertising:

(1) Credit granted by the Board for paid advertising shall be that which is appropriate when compared to the applicable outlet rate published in the domestic or Canadian catalogs of Standard Rate and Data Service or station, publisher, or outdoor rate cards. In the case of claims for credit not covered by any such source, the Board shall grant the claim if it is consistent with rates for comparable outlets. For advertisements in markets

other than the United States and Canada, paragraph (c)(4) of this section shall apply.

(2) The clear and evident purpose of each advertisement shall be to promote the sale, consumption, or use of California almonds, and nothing therein shall detract from this purpose.

(3) Credit for paid advertising shall be granted:

(i) For 100 percent of a handler's payment to an advertising medium: (A) For a generic advertisement of California almonds; (B) for an advertisement of the handler's brand of almonds; (C) when either of these advertisements includes reference to a complementary commodity or product; or (D) for a trade media advertisement that displays branded food products containing almonds, or announces a handler's future promotion activities, including joint promotions, and the entire expenditure is borne by the handler.

(ii) For an advertisement resulting from joint participation by a handler and a manufacturer or seller of a complementary commodity or product, and including the brands of both, the credit shall be 50 percent of the total allowable payment to the advertising medium, or the handler's payment thereof, whichever is less.

(iii) For an advertisement resulting from joint participation by a handler and manufacturers or sellers of two complementary commodities or products, and including the brands of all three, the credit shall be one-third of the total allowable payment to the advertising medium, or the handler's payment thereof, whichever is less.

(iv) When almond products, other than almond butter, are advertised, the credit shall be 50 percent of the total allowable payment to the advertising medium or 50 percent of the handler's payment thereof, whichever is less: *Provided,* That (A) the almond product does not contain nuts other than almonds, (B) the almond product contains at least 50 percent raw shelled almonds by weight, and (C) the almond product displays the handler's brand. With respect to almond butter advertising, the credit shall be 100 percent of the total allowable payment to the advertising medium or 100 percent of the handler's payment thereof, whichever is less. For the handler to receive credit, the almond butter must meet the specifications contained in § 981.466, and the handler's brand must be displayed.

(4) Credit for media expenditures in a foreign market shall be granted:

(i) For the handler's unreimbursed media expenditures for advertising in any foreign market pursuant to a contract with the Foreign Agricultural Service, U.S. Department of Agriculture, provided the advertisements meet the requirements of paragraphs (c) (2) and (3) of this section and the limitations of paragraphs (c)(5) (i) and (ii) of this section.

(ii) For a handler's media expenditures for brand advertising of almonds in the following markets: Great Britain, France, Italy, West Germany, Denmark, Belgium, Ireland, Luxembourg, the Netherlands, Sweden, Norway, Finland, Switzerland, Singapore, Hong Kong, and Japan, credit shall be allowed when claims are substantiated by applicable rate cards. The provisions of this section applicable to domestic advertising shall also apply to the crediting of advertising in these markets. The total of the foreign credit shall not exceed 20 percent, or $500,000, whichever is greater, of a handler's advertising assessments in each crop year.

(5) Credit granted a handler shall be subject to other conditions as follows:

(i) No credit shall be granted to a handler when more than two complementary branded products are included in an advertisement.

(ii) Advertisements which, in addition to promoting California almonds, also mention or promote the sale of noncomplementary commodities or products, or of competing nuts, shall not be eligible for credit.

(iii) Advertisements which direct consumers to one or more named retail outlets, other than handler operated, shall not be eligible for credit.

(6) A handler must file a claim with the Board to obtain credit for an advertising expenditure. Except as provided in paragraph (b) of this section, no credit shall be granted unless a preliminary claim is filed on or before

July 15 of the succeeding crop year and a final claim is filed on or before October 15 of the succeeding crop year. Each preliminary claim must be filed on an ABC Form 31 (claim for advertising credit), stating that documentation will be submitted as expeditiously as possible, but no later than October 15. If this preliminary claim is not filed on or before July 15, there will be no consideration of the claim under any circumstances. Each final claim must be submitted on ABC Form 31 and accompanied by appropriate proof of performance as follows:

(i) For published advertisements, submit a copy of the publication invoice, agency invoice, if any, and tear sheet of the advertisement.

(ii) For radio advertisements, submit a copy of the station invoice, a copy of the script, or reference to a copy on file with the Board, and the agency invoice, if any.

(iii) For television advertisements, submit a copy of the station invoice, a copy of the script and tape or story board of the advertisement, or a reference to these in the Board files, and the agency invoice, if any.

(iv) For outdoor advertisements, submit a copy of the company invoice, a photograph of the display or a reference to a photograph in the Board files, and the agency invoice, if any.

(v) Each claim shall also include a certification to the Secretary of Agriculture and to the Board that the claim is just and conforms to requirements set forth in § 981.41(c). The Board shall advise the handler promptly of the extent to which such claim has been allowed.

(d) The following requirements shall apply to crediting for marketing promotion other than paid advertising:

(1) Credit for marketing promotion expenditures shall be granted:

(i) For the distribution of sample packages containing one-half ounce or less of almonds to charitable or educational outlets. Such sample packages shall be packed for the Board under its generic label and sold to the distributing handlers at the price paid for them by the Board. Credit shall be based on the price a handler pays the Board for such packages and upon receipt by the Board of acceptable proof of distribution. Such sample packages may or may not be personalized with an individual handler's label. Credit applicable to the distribution of sample packages shall be subject to the following conditions:

(A) A handler may receive credit for 150 percent of the purchase price of such packages against the creditable assessment obligation incurred on the first 4,000,000 redetermined kernel weight pounds received by him during a crop year.

(B) A handler may receive credit for 100 percent of the purchase price of such packages against the creditable assessment obligation incurred on the second 4,000,000 redetermined kernel weight pounds received by him during a crop year.

(C) No credit shall be granted in excess of the creditable assessment obligation incurred on 8,000,000 redetermined kernel weight pounds received by a handler during a crop year.

(D) No credit shall be granted for sample packages distributed to market segments where almonds are already being sold. Handlers shall obtain approval from the Board prior to distribution to ensure that this condition is met.

(E) No credit shall be applicable to the distribution of sample packages in outlets where they will be used for resale.

(F) No credit shall be granted without receipt by the Board of acceptable proof of distribution. This proof shall consist of a signed statement from the organization to which sample packages were distributed, on that organization's letterhead, stating: (*1*) The name and address of the handler from whom the packages were received, (*2*) the date of receipt, (*3*) the volume of packages received, (*4*) how such packages will be used, and (*5*) a statement that such packages will not be used for resale. Except as provided in paragraph (b) of this section, no credit shall be granted for a crop year unless this proof of distribution is submitted no later than July 15 of the succeeding crop year.

(ii) For promotion materials available from the Board and sold to handlers at the price paid for them by the Board. Credit shall be granted for the

amount a handler pays the Board for such materials upon purchase. Such materials may or may not be personalized with the label of an individual handler.

[47 FR 40784, Sept. 16, 1982, as amended at 48 FR 11250, Mar. 17, 1983; 49 FR 19798, May 10, 1984; 50 FR 16452, Apr. 26, 1985]

§ 981.442 Quality control.

(a) *Incoming.* Pursuant to § 981.42(a), the quantity of inedible kernels in each variety of almonds received by a handler, including almonds of his own production, shall be determined and disposed of in accordance with the provisions of this paragraph.

(1) *Sampling.* Each handler shall meet its disposition obligation by delivering packer pickouts, kernels rejected in blanching, pieces of kernels, meal accumulated in manufacturing, or other material, to crushers, feed manufacturers, feeders, or dealers in nut wastes, on record with the Board as Accepted Users. In the case of a handler having an annual total obligation of less than 1,000 pounds, delivery may be to the Board in lieu of an accepted user, in which the case the Board would certify the disposition lot and report the results to the USDA. For dispositions by handlers with the mechanical sampling equipment, samples may be drawn by the handler in a manner acceptable to the Board and the inspection agency. For all other dispositions samples shall be drawn by or under the supervision of the inspection agency.

(2) *Variety.* For the purpose of classifying receipts by variety to determine a handler's disposition obligation, "variety" shall mean that variety of almonds which constitutes at least 90 percent of a lot. If no variety constitutes at least 90 percent of the almonds in a lot, the lot shall be designated as "mixed". If the variety which constitutes at least 90 percent of the almonds in the lot is unknown, the lot shall be designated "unknown".

(3) *Analysis of sample.* Each sample shall be analyzed by or under the surveillance of the inspection agency to determine the kernel content and the proportion of inedible kernels in the sample. The inspection agency shall prepare a report for each handler showing, by variety, the total adjusted kernel weight received by handler, the inedible kernel weight and any other information as the Board may prescribe. The report shall cover the handler's daily receipt or the handler's total receipts during a period not exceeding one month, and shall be submitted by the inspection agency to the Board and the handler.

(4) *Disposition obligation.* The weight of inedible kernels in excess of zero percent of kernel weight reported to the Board of any variety received by a handler shall constitute his disposition obligation. If a variety other than Peerless is used as bleaching stock, the weight so used may be reported to the Board and the disposition obligation for that variety reduced proportionately.

(5) *Meeting the disposition obligation.* Each handler shall meet its disposition obligation by delivering packer pickouts, kernels rejected in blanching, pieces of kernels, meal accumulated in manufacturing, or other material, to crushers, feed manufacturers, feeders, or dealers in nut wastes on record with the Board as accepted users. Handlers shall notify the Board at least 72 hours prior to delivery: *Provided,* That the Board or its employees may lessen this notification time whenever it determines that the 72 hour requirement is impracticable. The Board may supervise deliveries at its option. In the case of a handler having an annual total obligation of less than 1,000 pounds, delivery may be to the Board in lieu of an accepted user, in which case the Board would certify the disposition lot and report the results to the USDA. For dispositions by handlers with mechanical sampling equipment, samples may be drawn by the handler in a manner acceptable to the Board and the inspection agency. For all other dispositions samples shall be drawn by or under the supervision of the inspection agency. Upon approval by the Board and the inspection agency, sampling may be accomplished at the accepted user's destination. The almond meat content of each delivery shall be determined by the inspection agency and reported by the inspection agency to the Board and the handler and cred-

ited to the handlers's disposition obligation on ABC Form 8. Deliveries containing less than 10 percent almond meat content shall not be credited against the disposition obligation. Each handler's disposition obligation shall be satisfied when the almond meat content of the material delivered to accepted users equals the disposition obligation, but no later than July 31, succeeding the crop year in which the obligation was incurred.

(6) *Inedible almonds unfit for processing.* All lots received from growers as "inedible almonds unfit for processing," shall be exempt from the requirements of paragraphs (a) (1) and (3) of this section, but shall be disposed of in their entirety (other than as pickouts), as provided in paragraph (a)(5) of this section. Disposition of these lots shall not be credited toward the disposition obligation of paragraph (a)(4) of this section. If a grower sells or ships inedible almonds to a person other than a handler, the grower thereby becomes a handler and subject to all the requirements of this paragraph.

[42 FR 3160, Jan. 17, 1977, as amended at 43 FR 47969, Oct. 18, 1978; 44 FR 30075, May 24, 1979; 44 FR 67077, Nov. 23, 1979; 49 FR 40788, Oct. 18, 1984; 50 FR 47708, Nov. 20, 1985]

§ 981.450 Exempt dispositions.

As provided in § 981.50 any handler disposing of almonds for crushing into oil, or for poultry or animal feed, may have the kernel weight of these almonds excluded from his receipts, and exempt from program obligations so long as the handler qualifies as, or delivers such almonds to, a crusher, a feeder, or dealer in nut waste; the crusher, feeder, or dealer are acceptable to the Board; each delivery is made directly to the crusher, feeder, or dealer, by June 30 of the crop year; and each delivery is certified to the Board by the handler on ABC Form 8.

[42 FR 19322, Apr. 13, 1977]

§ 981.455 Interhandler transfers.

(a) *Transfers of almonds.* Interhandler transfers of almonds pursuant to § 981.55 shall be reported to the Board on ABC Form 7. The report shall contain the following information: (1) Date of transfer; (2) the names, and plant locations of both the transferring and receiving handlers; (3) the variety of almonds transferred; (4) whether the almonds are shelled or unshelled; and (5) the name of the handler assuming reserve and assessment obligations on the almonds transferred. ABC Form 7 shall be signed by the transferring handler and by the receiving handler if the latter is assuming the obligation(s).

(b) *Transfers of reserve credits.* If a handler has reserve disposition in excess of his reserve obligation, all or part of his excess disposition may be credited to another handler. The transferred credit shall not exceed the quantity needed by the receiving handler to cover his reserve obligation. The Board shall complete the transfer upon receipt of an ABC Form 11 executed by both handlers. No transfer of reserve credits shall be made to satisfy a handler's inedible disposition obligation incurred pursuant to § 981.42(a).

(c) Transfer of inedible obligation may be made, with the approval of the Board, only when the inedible kernels are physically transferred with the entire lot of almonds. The transfer of the lot shall be reported on ABC Form 9, showing date of transfer and, for the transferring handler, the (1) original inspection certificate number, (2) total weight shown on the certificate, and (3) weight of inedible kernels shown on the certificate. For the receiving handler, ABC Form 9 shall show the (1) new inspection certificate number, (2) total weight shown on the certificate, and (3) weight of inedible kernels shown on the certificate. ABC Form 9 shall be signed by both, the transferring handler and the receiving handler, and submitted by the receiving handler to the Board for approval.

[42 FR 19322, Apr. 13, 1977, as amended at 44 FR 30076, May 24, 1979]

§ 981.466 Almond butter.

Almond butter as used in § 981.66(c) is hereby defined as a comminuted food product prepared by grinding shelled or blanched almonds into a homogeneous plastic or semiplastic mass or liquid having very few particles larger than 1/16 inch in any dimension.

To produce chunky style almond butter, almond chunks or pieces may be added up to a maximum of 25 percent by weight of the finished product. The size of the almond pieces used to make chunky style almond butter may not exceed 5/16 inch in any dimension.

[48 FR 11250, Mar. 17, 1983]

§ 981.467 Disposition in reserve outlets by handlers.

(a) *Agents of Board.* Beginning with July 1 of any crop year, a handler may become an agent of the Board pursuant to § 981.67 for the purpose of disposing of reserve almonds of such crop year, in the authorized outlets. The agency shall be established upon a handler executing a reserve agreement (ABC Form 12) ABC, applicable to export or diversion, or both, containing terms and conditions specified by the Board.

(b) *Reserve credit.* Credit in satisfaction of a reserve obligation shall not exceed the accrued reserve obligation derived by applying the reserve percentage to the quanity of almonds received by a handler for his own account during the crop year. Disposition by an agent of the Board in eligible reserve outlets within a crop year in excess of his reserve obligation shall be held to be a disposition of salable almonds. Whenever such disposition has been inspected and certified, if required, and has complied with the terms, conditions, and documentation applicable to disposition of reserve almonds as determined by the Board, the disposition may be credited against any reserve obligation subsequently incurred by the handler during that crop year, or the disposition may be credited pursuant to § 981.455(b) against the reserve obligation of another handler.

[42 FR 19322, Apr. 13, 1977]

§ 981.472 Report of almonds received.

(a) Each handler shall report to the Board on ABC Form 1 the total adjusted kernel weight of almonds, by varieties, received by it for its own account within any of the hereinafter prescribed reporting periods. Each such report shall be filed with the Board within five (5) business days after the close of the applicable one of the following reporting periods: July 1 to August 31; September 1 to September 15; September 16 to September 30; October 1 to October 15; October 16 to October 31; November 1 to November 15; November 16 to November 30; December 1 to December 31; January 1 to March 31; April 1 to June 30.

(b) For the reporting periods July 1 through December 31, and January 1 through March 31, each handler shall submit a summary report to the Board, within 30 days after the end of the reporting period, which shall show the adjusted kernel weight of almonds received for the handler's own account by county of production and such varieties as may be requested by the Board.

[44 FR 30076, May 24, 1979]

§ 981.473 Redetermination reports.

Each handler shall furnish for use by the Board in redetermination of the kernel weight of almonds received for his own account and for marketing policy considerations, the information listed and described in this section. Such information shall be reported within the applicable times specified in § 981.73 on forms provided by the Board.

(a) *Handler carryover.* A report of the weight of all almonds, whether unshelled or shelled, wherever located, held by the handler for his own account, whether or not sold.

(b) *Reserve.* A report of all reserve almonds, net weight, which have been disposed of in the manner provided in §§ 981.66 and 981.67.

(c) *Delivered sales.* A report of salable almonds sold and delivered, showing the weight, and whether unshelled or shelled, except those disposed of pursuant to the requirements for reserve disposition, or used in almond products.

(d) *Almond products.* A report of all almonds used by the handler in the manufacture of any almond product as defined in § 981.15.

(e) *Transfers.* A report of almonds transferred to another handler showing the weight of each lot transferred, whether unshelled or shelled.

(f) *Exempt outlet deliveries.* A report showing the quantity of almonds delivered by a handler to Board accepted crushers, feed manufaturers, or feeders, and—for the purpose of establishing the assessment obligation—the quantity of almonds the handler must deliver to the Board approved outlets to meet his disposition obligation pursuant to § 981.42(a).

[42 FR 19322, Apr. 13, 1977, as amended at 42 FR 56488, Oct. 26, 1977]

§ 981.474 **Other reports.**

(a) *Report of shipments and commitments.* Each handler shall report on ABC Form 25 the following: (1) All shipments of almonds, inshell and shelled and by classification (domestic, and export by countries of destination); and (2) all commitments (almonds not shipped, but sold or otherwise obligated) whether domestic contract, export contract, or non-contract. If the destination of any export is unknown to the handler, he shall have the broker/exporter furnish this information to the Board. In support of this report, the handler shall keep invoices on the shipments, or such other documentation as may be acceptable to the Board. The reports shall be filed with the Board within five business days after the close of each month of the crop year.

(b) *Report of export sales.* At the time of each export sale, each handler shall report it to the Board on ABC Form 18 and upon delivery into export shall report this on ABC Form 19. If any export is not made directly by the handler, he shall send the ABC Form 19 to the broker/exporter and request him to make the report to the Board. These forms shall include the number and type of container, net weight, variety and whether inshell or shelled, time of export and destination. In years of minimum export prices applicable to reserve almonds, ABC Form 19 shall include the grade and size, the inspection certificate number, the price, and any terms defining the price. Whenever expert shipments are included with domestic shipments in the estimated trade demand for a crop year, this paragraph shall not apply.

(c) *Custom processing report.* Handlers shall submit to the Board, by the 15th of each month, a report of all persons or firms, including growers, for whom they have custom processed almonds which have not been reported in the handler's report of almonds received, ABC Form 1. The report shall list the name, address, number of pounds processed and returned to owner, date(s) on which the processing was accomplished, and the date(s) on which almonds were returned to the owner . THe Board may exempt reporting on small quantities of custom processed almonds if it determines that the exemption is consistent with other order requiremens and will not intefere with its compliance activities.

[50 FR 47709, Nov. 20, 1985]

PART 982—FILBERTS/HAZELNUTS GROWN IN OREGON AND WASHINGTON

Subpart—Order Regulating Handling

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AUTHORITY: Secs. 1-19, 48 Stat. 31, as amended; 7 U.S.C. 601-674.

Subpart—Order Regulating Handling

SOURCE: 24 FR 6185, Aug. 1, 1959, unless otherwise noted. Redesignated at 26 FR 12751, Dec. 30, 1961.

EDITORIAL NOTE: For nomenclature changes see 46 FR 26038, May 11, 1981.

DEFINITIONS

§ 982.1 Secretary.

"Secretary" means the Secretary of Agriculture of the United States, or any other officer or employee of the United States Department of Agriculture who is, or who may be, authorized to perform the duties of the Secretary of Agriculture of the United States.

§ 982.2 Act.

"Act" means Public Act No. 10, 73d Congress, as amended and as reenacted and amended by the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 et seq.; 48 Stat. 31, as amended).

§ 982.3 Person.

"Person" means an individual, partnership, corporation, association, or any other business unit.

§ 982.4 Filberts.

"Filberts" means filberts or hazelnuts produced in the States of Oregon and Washington from trees of the genus Corylus.

§ 982.5 Area of production.

"Area of production" means the States of Oregon and Washington.

§ 982.6 Grower.

"Grower" is synonymous with "producer" and means any person engaged, in a proprietary capacity, in the commercial production of filberts.

§ 982.7 To handle.

"To handle" means to sell, consign, transport or ship (except as a common carrier of filberts owned by another person), or in any other way to put filberts, inshell or shelled, into the channels of trade either within the area of production or from such area to points outside thereof: *Provided*, That sales or deliveries by growers to handlers within the area of production or authorized disposition of restricted filberts and substandard filberts shall not be considered as handling.

§ 982.8 Handler.

"Handler" means any person who handles filberts.

§ 982.9 Cooperative handler.

"Cooperative handler" means any handler which is a cooperative marketing association of growers regardless of where or under what laws it may be organized.

§ 982.10 Independent handler.

"Independent handler" means a handler who is not a cooperative handler.

§ 982.11 Pack.

"Pack" means a specific commercial classification according to size, internal quality, and external appearance and condition of filberts packed in accordance with any of the pack specifications prescribed pursuant to § 982.45.

§ 982.12 Merchantable filberts.

"Merchantable filberts" means inshell filberts that meet the grade and size regulations in effect pursuant to § 982.45 and are likely to be available for handling as inshell filberts.

§ 982.13 Substandard filberts.

"Substandard filberts" means filberts, inshell or shelled, that do not meet the minimum standards effective pursuant to § 982.45.

§ 982.14 Restricted filberts.

"Restricted filberts" means inshell filberts withheld in satisfaction of a restricted obligation.

§ 982.15 Inshell handler carryover.

"Inshell handler carryover" as of any given date means all inshell filberts (except restricted filberts) wherever located then held by handlers or for their accounts, whether or not sold, including certified merchantable filberts and the estimated merchantable content of those uncertified filberts then held by handlers which are intended for handling as inshell filberts.

§ 982.16 Inshell trade demand.

"Inshell trade demand" means the quantity of inshell filberts acquired by the trade from all handlers during a marketing policy year for distribution in the continental United States.

[40 FR 53226, Nov. 17, 1975]

§ 982.17 Marketing year.

"Marketing year" means the 12 months from May 1 to the following April 30, both inclusive, or such other period of time as may be recommended by the Board and established by the Secretary.

[46 FR 26038, May 11, 1981]

§ 982.18 Board.

"Board" means the Filbert/Hazelnut Marketing Board established pursuant to § 982.30.

[46 FR 26038, May 11, 1981]

§ 982.19 Disappearance.

"Disappearance" means the difference between orchard-run production and the available supply of merchantable filberts and merchantable equivalent of shelled filberts.

[46 FR 26038, May 11, 1981]

§ 982.20 Part and subpart.

"Part" means the order, as amended, regulating the handling of filberts grown in Oregon and Washington, and all rules, regulations, and supplementary orders issued thereunder. This order, as amended, regulating the han-

dling of filberts grown in Oregon and Washington shall be a "subpart" of such part.

[24 FR 6185, Aug. 1, 1959. Redesignated at 26 FR 12751, Dec. 30, 1961 and 46 FR 26038, May 11, 1981]

FILBERT CONTROL BOARD

§ 982.30 Establishment and membership.

There is hereby established a Filbert Control Board consisting of nine members, each of whom shall have an alternate. The nine member positions shall be allocated as follows:

(a) One handler member to represent cooperative handlers;

(b) One handler member to represent independent handlers;

(c) One handler member to represent cooperative handlers or independent handlers, whichever group of such handlers handled more than 50 percent of the filberts handled by all handlers during the fiscal year preceding the fiscal year in which nominations are made;

(d) Two grower members to represent cooperative growers (i.e., growers, whose filberts are handled through cooperative handlers);

(e) Two grower members to represent independent growers (i.e., growers whose filberts are handled through independent handlers);

(f) One grower member to represent growers whose filberts are handled through cooperative handlers or independent handlers whichever group of such handlers handled more than 50 percent of the filberts handled by all handlers during the marketing year preceding the marketing year in which nominations are made;

(g) One public member who is neither a grower nor a handler.

[24 FR 6185, Aug. 1, 1959, as amended at 46 FR 26038, May 11, 1981]

§ 982.31 Independent grower districts.

(a) Whenever the grower member provided in § 982.30(f) is to represent independent growers, one independent grower member and his alternate shall be nominated and selected from each of the following districts, except as may be otherwise provided pursuant to paragraph (b) of this section:

(1) District No. 1—The State of Washington, and Multnomah and Washington Counties in Oregon.

(2) District No. 2—Clackamas, Marion and Yamhill Counties in Oregon.

(3) District No. 3—Benton, Lane, Linn, Polk and all other Counties in Oregon except those included in District No. 1 and District No. 2.

(b) Whenever, pursuant to § 982.30(f) the grower member is not to represent independent growers, or the districts as established pursuant to paragraph (a) of this section fail to provide equitable representation to such independent growers, the Secretary, on the basis of a recommendation of the Board or other information, may establish different districts within the production area. In recommending any changes in districts, the Board shall consider shifts in filbert acreage within and among the districts, and other relevant factors.

§ 982.32 Nomination.

(a) Nominees shall be chosen for the respective member and alternate member positions specified in § 982.30(a) through (g) by such groups.

(b) Nominations for each handler group shall be submitted on the basis of ballots to be mailed by the Board to all handlers in such group.

(c) Nominations on behalf of growers who market their filberts through cooperative handlers shall be submitted on the basis of ballots cast by each cooperative handler for its grower patrons.

(d) Nominations on behalf of independent growers shall be submitted after balloting by such growers conducted as follows: Names of the grower candidates to accompany the ballot shall be submitted to the Board each fiscal year on petitions signed by not less than 10 independent growers who are of record with the Board; each grower may sign only as many petitions as there are persons to be nominated and whenever such petitions fail to result in submission of two names for each position to be filled, the Board shall request all County Agricultural Agents in filbert producing counties which produced at least 10

percent of the total filbert production during the preceding marketing year to recommend one or more eligible growers for each position to be included on the ballot. Ballots, accompanied by the names of all such candidates together with instructions, shall be mailed to all independent growers who are of record with the Board; each ballot shall contain appropriate blank spaces for the voter to indicate his choice for each member position and for each alternate member position which is to be filled. The eligible person receiving the highest number of votes for a particular position shall be the nominee for that position, except that, in case of a tie, the names of the tied candidates shall be submitted. If the Secretary determines that this procedure is unsatisfactory to independent growers because it is too difficult or costly to administer, it does not result in the names of a sufficient number of eligible candidates being submitted with the ballots, or it should be changed for other reasons, he may change this procedure through the formulation and issuance of superseding regulations.

(e) All votes cast by cooperative handlers, independent handlers, or for cooperative growers, shall be weighted according to the tonnage of certified merchantable filberts and, when shelled filbert grade and size regulations are in effect, the inshell equivalent of certified shelled filberts (computed to the nearest whole ton) recorded by the Board as handled by each such handler or cooperative grower group during the preceding marketing year and if less than one ton is recorded for any such handler or cooperative grower group, the vote shall be weighted as one vote. All votes cast by independent growers shall be given equal weight. Nominations received in the foregoing manner by the Board shall be reported to the Secretary at least 60 days prior to the beginning of each marketing year, together with a certificate of all necessary data and other information deemed by the Board to be pertinent or requested by the Secretary: *Provided,* That the nominations of the persons who would serve for terms beginning May 1, 1981, together with such certificate and other information, shall be reported as soon as practicable after May 1. If such nominations of any group are not submitted to the Secretary by that time, the Secretary may select the representatives of that group without nomination.

(f) Nominees for the public member and alternate member positions specified in § 982.30(g) shall be chosen by the other eight members who are to serve on the Board during the ensuing marketing year. If nominations for such member or alternate are not submitted within 30 days after the beginning of the marketing year, the Secretary may select such member or alternate without nomination: *Provided,* That the nominations for such member and alternate member whose terms would begin May 1, 1981, shall be submitted as soon as practicable after May 1.

(g) No independent grower who during the then current marketing year handled any filberts other than of his own production may vote for or be a nominee to represent independent growers on the Board nor may he be any such nominee if during such marketing year he was employed by a filbert handler.

[24 FR 6185, Aug. 1, 1959, as amended at 46 FR 26038, May 11, 1981]

§ 982.33 Selection and term of office.

(a) *Selection.* Members and their respective alternates shall be selected by the Secretary from nominees submitted by the Board or from among other qualified persons.

(b) *Term of office.* (1) The term of office of each member and alternate member shall be two marketing years from the beginning of the marketing year, except that (i) the terms of office of one of the grower members and the member's alternate specified in § 982.30 (a) and (b) shall expire at the end of the first even numbered marketing year following the year of selection, and the terms of office of all other members and alternate members shall expire at the end of the first odd-numbered marketing year following the year of selection; (ii) if the representation on the Board in an ensuing marketing year will, by reason of

change in representation pursuant to § 982.30 (c) and (f), be different from that in the current marketing year, the terms of office of all grower and handler members and alternate members shall expire at the end of the current marketing year and successor members and alternate members shall be nominated and selected in conformance with §§ 982.30 and 982.33; (iii) if the districts for independent grower representation in an ensuing marketing year will be different from that in the current marketing year, the terms of office of all independent grower members and alternate members specified in § 982.30 (e) and (f) shall expire at the end of the current marketing year, and persons nominated to succeed them shall be nominated and selected so as to conform with such changed representation.

(2) Members and alternate members shall serve for the term of office for which they are selected and have qualified, and until their respective successors are selected and have qualified.

[24 FR 6185, Aug. 1, 1959, as amended at 46 FR 26038, May 11, 1981]

§ 982.34 Qualification.

(a) Any person selected to serve as a member or an alternate member of the Board shall qualify by filing with the Secretary a written acceptance of appointment. Any member or alternate member who at the time of selection was a member or employed by a member of the group which nominated that person shall, upon ceasing to be such a member or employee, become disqualified to serve further and that position on the Board shall be deemed vacant. In the event any member or alternate member of the Board qualified and selected, in accordance with the provisions of §§ 982.30 and 982.32, to represent independent growers should during that person's term of office handle filberts produced by other growers or become an employee of a handler, that position on the Board shall thereupon be deemed to be vacant.

(b) No person nominated to serve as a public member or alternate shall have a financial interest in any filbert growing or handling operation.

[46 FR 26038, May 11, 1981]

§ 982.35 Vacancy.

To fill any vacancy occasioned by the death, removal, resignation, or disqualification of any member or alternate of the Board, a successor for his unexpired term shall be nominated and selected in the manner provided in §§ 982.32 and 982.33, so far as applicable, unless selection is deemed unnecessary by the Secretary.

§ 982.36 Alternates.

(a) An alternate for a member of the Board shall act in the place of such member in his absence, and in the event of his death, removal, resignation or disqualification, until a successor for his unexpired term has been selected and has qualified.

(b) If a member of the Board and his alternate are unable to attend a Board meeting, the Board may designate any other alternate from the group in § 982.30 represented by such absent member to serve in the member's place. For purposes of this section the cooperative handler group and cooperative grower group shall be considered as one group.

§ 982.37 Procedure.

(a) Seven members of the Board shall constitute a quorum at an assembled meeting of the Board, and any action of the Board shall require the concurring vote of at least five members. At any assembled meeting all votes shall be cast in person.

(b) The Board may vote by mail, telephone, telegraph, or other means of communication: *Provided,* That any votes (except mail votes) so cast shall be confirmed in writing. When any proposition is submitted for voting by any such method its adoption shall require nine concurring votes.

(c) The members of the Board and their alternates shall serve without compensation, but members and alternates acting as members shall be allowed their necessary expenses: *Provided,* That the Board may request the attendance of one or more alternates not acting as members at any meeting of the Board, and such alter-

nates may be allowed their necessary expenses.

§ 982.38 Powers.

The Board shall have the following powers:

(a) To administer the provisions of this subpart in accordance with its terms;

(b) To make rules and regulations to effectuate the terms and provisions of this subpart;

(c) To receive, investigate, and report to the Secretary complaints of violations of this subpart;

(d) To recommend to the Secretary amendments to this subpart.

§ 982.39 Duties.

The Board shall have among others the following duties:

(a) To select from among its members such officers and adopt rules or bylaws for the conduct of its meetings as it deems advisable;

(b) To act as intermediary between the Secretary and any handler or grower;

(c) To keep minute books and records which will clearly reflect all of its acts and transactions, and such books and records shall be available for examination by the Secretary at any time;

(d) To furnish to the Secretary such available information as he may request;

(e) To appoint such employees as it deems necessary and determine the salaries, define the duties and fix the bonds of such employees;

(f) To cause the books of the Board to be audited by one or more public accountants approved by the Board at least once for each marketing year and at such other times as the Board deems necessary or as the Secretary may request, and to file with the Secretary reports of all audits made;

(g) To investigate the growing, shipping and marketing conditions with respect to filberts, and assemble data in connection therewith;

(h) To give the Secretary the same notice of the meetings of the Board as is given to its members; and

(i) To furnish to the Secretary a verbatim report of the proceedings of each meeting of the Board held for the purpose of making marketing policy recommendations.

[24 FR 6185, Aug. 1, 1959, as amended at 46 FR 26039, May 11, 1981]

Marketing Policy

§ 982.40 Marketing policy and volume regulation.

(a) *General.* As provided in this section, for each marketing year the Board may hold meetings for the purpose of computing its marketing policy for that year and shall do so for the purpose of submitting any recommendations on its policy to the Secretary. The Board may designate one of its employees to compute and announce the preliminary computed and final computed free and restricted percentages.

(b) *Trade demand.* Prior to August of a marketing year, the Board shall recommend establishment of an inshell trade demand for that year to the Secretary. The inshell trade demand shall equal the average of the trade acquisitions of inshell filberts during the preceding three years. If the trade acquisitions during any one or all of those years was abnormally low because of crop conditions, the Board may use a prior year or years in determining the three-year average. If the Secretary finds, on the basis of the Board's recommendation or other information that limiting the quantity of merchantable filberts which may be handled during a marketing year through application of the free and restricted percentages to that trade demand as provided in paragraph (c) of this section would tend to effectuate the declared policy of the act, the Secretary shall establish that trade demand.

(c) *Inshell allocation*—(1) *Preliminary computed percentages.* Prior to September 20 of that marketing year, the Board shall compute and announce preliminary computed free and restricted percentages for that year, to release 70 percent of the inshell trade demand computed for that year. The preliminary computed free percentage shall be computed by multiplying that trade demand, adjusted by the declared carryin, by 70 percent and di-

viding by the most recent official estimate of orchard-run production less the average disappearance during the preceding three years, plus the undeclared carryin. The difference between 100 percent and the preliminary free percentage shall be the preliminary computed restricted percentage.

(2) *Final computed percentages.* The Board upon determining that a firm field price has been established for filberts for that marketing year shall compute and announce final computed free and restricted percentages for that year, to release 80 percent of the inshell trade demand computed for that year. The final computed free percentage shall be computed by multiplying that trade demand, adjusted by the declared carryin, by 80 percent and dividing by the most recent official estimate of orchard-run production less the average disappearance during the preceding three years plus the undeclared carryin. The difference between 100 percent and the final computed free percentage shall be the final computed restricted percentage.

(3) *Final percentages.* On or before November 15 the Board shall meet to recommend to the Secretary the final free and restricted percentages to release 100 percent or up to 110 percent if market conditions justify of the inshell trade demand previously established by the Secretary for the marketing year. The recommendation shall include the following;

(i) The estimated tonnage of merchantable filberts expected to be produced during the marketing year.

(ii) The estimated tonnage of inshell filberts held by handlers on the first day of the marketing year which may be available for handling as inshell filberts thereafter.

(iii) Any other pertinent factors bearing on the marketing of filberts during the marketing year. Whenever the Secretary finds, on the basis of the recommendation of the Board or other available information that to establish the final free and restricted percentages would tend to effectuate the declared policy of the act, the Secretary shall establish such percentages.

(d) *Grade and size regulations.* Prior to September 20 the Board may consider grade and size regulations in effect and may recommend modifications thereof to the Secretary.

(e) *Revison of marketing policy.* At any time prior to February 15 of the marketing year the Board may recommend to the Secretary revisons in the marketing policy for that year: *Provided,* That in no event shall any revison result in free and restricted percentages which would release more than 110 percent of the inshell trade demand computed for that marketing year. At any time during the period December 1 through February 10 at the request of two or more handlers who during the preceding marketing year handled at least 10 percent of all filberts handled the Board shall meet to determine whether the marketing policy should be revised.

[46 FR 26039, May 11, 1981, as amended at 47 FR 44231, Oct. 7, 1982]

EFFECTIVE DATE NOTE: At 47 FR 44231, Oct. 7, 1982, the second and third sentences of § 982.40(b) were suspended until a new formula is put into effect.

§ 982.41 Free and restricted percentages.

The free and restricted percentages computed by the Board or established by the Secretary pursuant to § 982.40, shall apply to all merchantable filberts handled during the current marketing year. Until the preliminary or final computed free and restricted percentages are computed by the Board for the current marketing year, the percentages in effect at the end of the previous marketing year shall be applicable.

[46 FR 26039, May 11, 1981]

GRADE AND SIZE REGULATION

§ 982.45 Establishment of grade and size regulations.

(a) *Minimum standards.* No handler shall handle any inshell or shelled filberts unless such inshell filberts meet requirements of Oregon No. 1 grade and medium size (as defined in the Oregon Grade Standards Filberts In Shell), and such shelled filberts meet such requirements as are established by the Secretary on the basis of a recommendation of the Board, except as may be otherwise provided in § 982.57. These minimum standards may be

modified by the Secretary on the basis of a recommendation of the Board or other information whenever he finds that such modification would tend to effectuate the declared policy of the act. Such minimum standards and the provisions of this part relating to the administration thereof shall continue in effect irrespective of whether the season average price of filberts is above the parity level specified in section 2(1) of the act.

(b) *Additional grade and size regulations.* When the season average price of filberts is not determined to be above parity, the Secretary may establish additional grade and size regulations for inshell filberts in the form of a more restrictive minimum standard than that specified in paragraph (a) of this section, or pack specifications as to grades and sizes that may be handled, if he finds, on the basis of a recommendation of the Board or other information, that such regulations would tend to effectuate the declared policy of the act.

[24 FR 6185, Aug. 1, 1959. Redesignated at 26 FR 12751, Dec. 30, 1961, and amended at 37 FR 589, Jan. 14, 1972]

§ 982.46 Inspection and certification.

(a) Before or upon handling any filberts, or before any inshell or shelled filberts are credited (under §§ 982.50 or 982.51) in satisfaction of a restricted obligation, each handler shall, at his own expense, cause such filberts to be inspected and certified by the Federal-State Inspection Service as meeting the then effective grade and size regulations or, if inshell or shelled filberts are withheld under § 982.51, the applicable requirements specified in that section. The handler obtaining such inspection of filberts shall cause a copy of the certificate issued by such inspection service applicable to such filberts to be furnished to the Board.

(b) All filberts so inspected and certified shall be identified by seals, stamps, tags, or other identification prescribed by the Board. Such identification shall be affixed to the filbert containers by the handler under direction and supervision of the Board or the Federal-State Inspection Service, and shall not be removed or altered by any person except as directed by the Board.

(c) Whenever the Board determines that the length of time in storage and conditions of storage of any lot of certified merchantable filberts have been or are such as to normally cause deterioration, it may require that such lot of filberts be reinspected at the handler's expense prior to handling.

[40 FR 53227, Nov. 17, 1975]

CONTROL OF DISTRIBUTION

§ 982.50 Restricted obligation.

(a) No handler shall handle inshell filberts unless prior to or upon shipment thereof, he: (1) Has withheld from handling a quantity, by weight, of certified merchantable filberts determined by dividing the quantity handled, or to be handled, by the applicable free percentage and multiplying the quotient by the restricted percentage; (2) has withheld from handling an equivalent quantity of creditable ungraded inshell filberts under § 982.51(a); or (3) has under § 982.51(b), declared in lieu of a quantity of certified merchantable filberts, under paragraph (a)(1) of this section, the equivalent quantity, by weight as determined under that section, of shelled filberts certified as meeting the standards in effect for Oregon No. 1 grade for shelled filberts as contained in Oregon Grade Standards for Filbert (Hazelnut) Kernels or such other standards as may be recommended by the Board and established by the Secretary. Any handler who intends to withhold shelled filberts in satisfaction of a restricted obligation must make such declaration to the Board prior to shelling any such filberts. Withholding may be temporarily deferred under the bonding provisions in § 982.54. The quantity of filberts required to be withheld shall be the restricted obligation. Certified merchantable filberts handled in accordance with this subpart shall be deemed to be the handler's quota fixed by the Secretary within the meaning of section 8a(5) of the Act.

(b) Inshell filberts withheld by a handler in satisfaction of his restricted obligation shall not be handled and

shall be held by him subject to examination by and accounting control of, the Board until disposed of pursuant to this part.

(c) A handler having certified merchantable filberts which have not been handled at the end of a marketing year may elect to have those filberts bear the restricted and assessment obligations of that year or of the marketing year in which handled. The Board shall establish such procedures as are necessary to facilitate the administration of this option among handlers.

(d) Whenever the restricted percentage for a marketing year is reduced, each handler's restricted obligation shall be reduced to conform with the new restricted percentage. Any handler who, upon such reduction, is withholding restricted filberts in excess of his new restricted obligation may have the excess freed from withholding by complying with such procedures as the Board may require to insure identification of the remaining filberts withheld.

[40 FR 53227, Nov. 17, 1975, as amended at 46 FR 26039, May 11, 1981]

§ 982.51 Restricted credit for ungraded inshell filberts and for shelled filberts.

(a) A handler may withhold ungraded inshell filberts in lieu of certified merchantable filberts in satisfaction of his restricted obligation, and the weight on which credit may be received shall be the total weight less the cumulative total percentage, by weight, of (1) all internal defects, (2) all external defects in excess of 10 percent and (3) all small-sized filberts in excess of 5 percent (as defined in the Oregon Grade Standards Filberts In Shell). Any lot of ungraded filberts having a creditable weight of less than 50 percent of its total weight, or not meeting the moisture requirements for certified merchantable filberts shall not be eligible for credit. All determination as to defects and small-sized filberts shall be made by the Federal-State Inspection Service at the handler's expense. Filberts so withheld shall be subject to the applicable requirements of § 982.50. The provisions of this section may be modified by the Secretary on the basis of a recommendation of the Board or other information.

(b) A handler may withhold, in accordance with § 982.50(a) shelled filberts in lieu of merchantable filberts in satisfaction of his restricted obligation subject to such terms and conditions as are recommended by the Board and established by the Secretary. The inshell equivalent of any such filberts shall be determined by multiplying the weight of the shelled filberts by 250 percent. This percent may be changed upon recommendation of the Board and approval of the Secretary.

[40 FR 53227, Nov. 17, 1975]

§ 982.52 Disposition of restricted filberts.

Filberts withheld from handling as inshell filberts pursuant to §§ 982.50 and 982.51 may be disposed of as follows:

(a) *Shelling.* Any handler may dispose of such filberts by shelling them under the direction or supervision of the Board or by delivering them to an authorized sheller. Any person who desires to become an authorized sheller in any marketing year may submit written application during such year to the Board. Such application shall be granted only upon condition that the applicant agrees:

(1) To use such restricted filberts as he may receive for no purpose other than shelling;

(2) To dispose of or deliver such restricted filberts, as inshell filberts, to no one other than another authorized sheller;

(3) To comply fully with all laws and regulations applicable to shelling of filberts; and

(4) To make such reports, certified to the Board and to the Secretary as to their correctness, as the Board may require.

(b) *Export.* Sales of certified merchantable restricted filberts for shipment or export to destinations outside the continental United States shall be made only by the Board. Any handler desiring to export any part or all of his certified merchantable restricted filberts shall deliver to the Board the certified merchantable restricted filberts to be exported, but the Board

shall be obligated to sell in export only such quantities for which it may be able to find satisfactory export outlets. Any filberts so delivered for export which the Board is unable to export shall be returned to the handler delivering them. Sales for export shall be made by the Board only on execution of an agreement to prevent reimportation into the continental United States. A handler may be permitted to act as agent of the Board, upon such terms and conditions as the Board may specify, in negotiating export sales, and when so acting shall be entitled to receive a selling commission of five percent of the export sales price, f.o.b. area of production. The proceeds of all export sales after deducting all expenses actually and necessarily incurred, shall be paid to the handler whose certified merchantable restricted filberts are so sold by the Board.

(c) *Other outlets.* In addition to the dispositions authorized in paragraphs (a) and (b) of this section, the Board may designate such other outlets into which such filberts may be disposed which it determines are noncompetitive with normal market outlets for inshell filberts. Such dispositions shall be made under the direction or supervision of the Board.

(d) *Restricted credits.* During any marketing year, handlers who dispose of a quantity of certified merchantable filberts, in restricted outlets, in excess of their restricted obligation, may transfer such excess credits to another handler or handlers. Upon a handler's written request to the Board during a marketing year, the Board shall transfer any or all of such excess restricted credits to such other handler or handlers as he may designate. The Board, with the approval of the Secretary, shall establish rules and regulations for the transfer of excess restricted credits.

[40 FR 53227, Nov. 17, 1975]

§ 982.53 Substandard filberts.

The Board shall, with the approval of the Secretary, establish such reporting and disposition procedures as it deems necessary to insure that filberts which do not meet the effective inshell or shelled filbert minimum standards do not enter normal market outlets for certified filberts.

§ 982.54 Deferment of restricted obligation.

(a) *Bonding.* Compliance by any handler with the requirements of § 982.50 as to the time when restricted filberts shall be withheld shall be temporarily deferred to any date required by the handler, but not later than 60 days prior to the end of the marketing year, upon the voluntary execution and delivery by such handler to the Board before handling any merchantable filberts of such marketing year of a written undertaking secured by a bond or bonds with a surety or sureties acceptable to the Board that on or prior to such date the handler will have fully satisfied the restricted obligation required by § 982.50: *Provided,* That for the marketing period August 1, 1980, through April 30, 1981, compliance with any restricted obligation may be deferred to April 30, 1981.

(b) *Bonding requirement.* Such bond or bonds shall, at all times during their effective period, be in such amounts that the aggregate thereof shall be no less than the total bonding value of the handler's deferred restricted obligation. The bonding value shall be the deferred restricted obligation poundage bearing the lowest bonding rate or rates, which could have been selected from the packs handled or certified for handling, multiplied by the applicable bonding rate. The cost of such bond or bonds shall be borne by the handler filing same.

(c) *Bonding rate.* Said bonding rate for each pack shall be an amount per pound representing the season's domestic price for such pack net to handler f.o.b. shipping point which shall be computed at the opening price for such pack announced by the handler or handlers who during the preceding marketing year handled more than 50 percent of the total volume handled. If such opening prices involve different prices announced by two or more handlers for respective packs the price so announced shall be averaged on the basis of the quantity of such packs handled during the preceding marketing year by each such handler. Until

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bonding rates for a marketing year are fixed the rates in effect for the preceding marketing year shall continue in effect, and when such new rates are fixed necessary adjustments should be made.

(d) *Filbert purchases.* Any sums collected through default of a handler on his bond shall be used by the Board to purchase from handlers, as provided in this paragraph, a quantity of certified merchantable filberts on which the restricted obligation has been met, not to exceed the total quantity represented by the sums collected. The Board shall at all times purchase the lowest priced packs offered, and the purchases shall be made from the various handlers as nearly as practicable in proportion to the quantity of their respective offerings of the pack or packs to be purchased.

(e) *Unexpended sums.* Any unexpended sums, which have been collected by the Board through default of a handler on his bond, remaining in the possession of the Board at the end of a marketing year shall be used to reimburse the Board for its expenses, including administrative and other costs incurred in the collection of such sums, and in the purchase of filberts as provided in paragraph (d) of this section. Any balance remaining after reimbursement of such expenses shall be distributed among all handlers in proprotion of the quantity of certified merchantable filberts handled by them during the marketing year in which the default occurred.

(f) *Transfer of filbert purchases.* Filberts purchased as provided in this section shall be turned over to those handlers who have defaulted on their bonds for disposal by them as restricted filberts. The quantity delivered to each handler shall be that quantity represented by the sums collected through default, and the different grades, if any, shall be apportioned among the various handlers on the basis of the ratio of the quantity of filberts to be delivered to each handler to the total quantity purchased by the Board with bonding funds.

(g) *Collection upon bonds.* Collection upon any defaulted bond shall be deemed a satisfaction of the restricted obligation represented by the collection.

[40 FR 53228, Nov. 17, 1975, as amended at 46 FR 26039, May 11, 1981]

§ 982.55 Exchange of certified merchantable filberts withheld.

Any handler who has withheld from handling certified merchantable filberts prusuant to the requirements of § 982.50 may exchange therefor an equal quantity, by weight, of other certified merchantable filberts. Any such exchange shall be made under the direction or supervision of the Board.

§ 982.56 Interhandler transfers.

Within the area of production, interhandler transfers of filberts may be made as follows:

(a) Uncertified inshell filberts may be sold or delivered by one handler to another for packing or shelling, and the receiving handler shall be responsible for compliance with the regulations effective pursuant to this part with respect to such filberts.

(b) Restricted filberts withheld by a handler may be sold or delivered to another handler for shelling, export, or other authorized outlet subject to the disposition requirements set forth in § 982.52.

(c) Certified filberts other than restricted filberts may be sold or delivered by one handler to another and the transferring handler shall be responsible for compliance with the requirements effective pursuant to this part, unless specified and agreed upon in writing by both handlers that the receiving handler shall be responsible for such compliance and a copy of such agreement is furnished to the Board.

(d) The Board, with the approval of the Secretary, shall establish procedures, including necessary reports, for such transfers.

§ 982.57 Exemptions.

The Board, with the approval of the Secretary, may exempt from any or all requirements pursuant to this part such quantities of filberts or types of shipment as do not interfere with the volume and quality control objectives

of this part, and shall require such reports, certifications or other conditions as are necessary to ensure that such filberts are handled or used only as authorized.

Expenses and Assessments

§ 982.60 Expenses.

The Board is authorized to incur such expenses including maintenance of an operating reserve fund as the Secretary may find are reasonable and likely to be incurred by it during each marketing year, for the maintenance and funtioning of the Board and for such purposes as the Secretary may, pursuant to the provisions of this subpart, determine to be appropriate. The recommendation of the Board as to the expenses and size of the operating reserve for each such marketing year, together with all data supporting such recommendations, shall be submitted to the Secretary at the beginning of the fiscal year in connection with which such recommendation is made. The funds to cover such expenses shall be acquired by levying assessments as provided in § 982.61.

§ 982.61 Assessments.

For each marketing year, the Secretary shall fix an assessment rate per pound of filberts handled and withheld, including the creditable weight of ungraded restricted filberts withheld pursuant to § 982.51 and, when subject to regulation pursuant to § 982.45, the inshell equivalent of shelled filberts certified which are produced from other than restricted filberts that will provide sufficient funds to meet the authorized expenses and reserve requirements of the Board. At any time during or after a marketing year when he determines, on the basis of a Board recommendation or other information, that a different rate is necessary, the Secretary may modify the assessment rate and the new rate shall be applicable to all such filberts. Each handler shall pay to the Board on demand, assessments on all such assessable filberts at the rate fixed by the Secretary. The Board shall impose a late payment charge on any handler who fails to pay his assessment within the time prescribed by the Board. In the event the handler thereafter fails to pay the amount outstanding, including the late payment charge, within the prescribed time, the Board shall impose an additional charge in the form of interest on such outstanding amount. The rate of such charges shall be prescribed by the Board, with the approval of the Secretary.

[24 FR 6185, Aug 1, 1959. Redesignated at 26 FR 12751, Dec. 30, 1961, and amended at 37 FR 589, Jan. 14, 1972]

§ 982.62 Accounting.

(a) *Operating reserve.* The Board with the approval of the Secretary may establish and maintain an operating monetary reserve in an amount not to exceed approximately one marketing year's operational expenses or such lower limits as the Board with the approval of the Secretary may establish.

(b) *Refunds.* At the end of a marketing year funds in excess of the marketing year's expenses and reserve requirements shall be refunded to handlers from whom collected and each handler's share of such excess funds shall be the amount of assessments the handler paid in excess of the handler's pro rata share of expenses of the Board. However, excess funds may be maintained and used by the Board until December 1 following the end of any such marketing year: *Provided,* That the Board shall refund to each handler upon request, or credit to the handler's account with the Board, the handler's share of such excess prior to January 1.

(c) *Termination.* Upon termination of this subpart any money remaining unexpended in possession of the Board shall be distributed in such manner as the Secretary may direct: *Provided,* That to the extent practical, such funds shall be returned pro rata to the persons from whom such funds were collected.

[24 FR 6185, Aug. 1, 1959, as amended at 46 FR 26040, May 11, 1981]

RECORDS AND REPORTS

§ 982.65 Carryover reports.

As of January 1, May 1, and August 1, or such other dates as the Board may recommend and the Secretary approve, each handler shall report within 10 days to the Board the handler's inventory of inshell and shelled filberts. Such reports shall be certified to the Board and the Secretary as to their accuracy and completeness and shall show, among other items, the following: (a) Certified merchantable filberts on which the restricted obligation has been met; (b) merchantable filberts on which the restricted obligation has not been met; (c) the merchantable equivalent of any filberts intended for handling as inshell filberts; and (d) restricted filberts withheld.

[46 FR 26040, May 11, 1981]

§ 982.66 Shipment reports.

Each handler shall report to the Board the respective quantities of inshell and shelled filberts handled by him during such periods and in such manner as are prescribed by the Board with the approval of the Secretary.

§ 982.67 Reports of disposition of restricted filberts.

(a) Each handler, before he disposes of any quantity of restricted filberts held by him, shall file with the Board a report of his intention to dispose of such quantity of restricted filberts. This report shall be filed not less than five days prior to the date on which the restricted filberts are disposed of, unless the five-day period is expressly waived by the Board.

(b) Each handler, within 15 days after the disposition of any quantity of restricted filberts, shall file with the Board a report of the actual disposition of such quantity of restricted filberts. Such reports shall be certified to the Board and to the Secretary as to their correctness and accuracy.

(c) All reports required by this section shall show the quantity, pack, and location of the filberts covered by such reports; the applicable handler's storage lot and inspection certificate numbers; and the disposition of the restricted filberts which is intended or which has been accomplished.

§ 982.68 Other reports.

Each handler shall furnish to the Board such other reports as the Board, with the approval of the Secretary, may require to enable it to exercise its powers and to perform its duties.

§ 982.69 Verification of reports.

For the purpose of checking and verifying reports submitted by handlers, the Secretary and the Board, through its duly authorized agents, shall have access to each handler's premises at any time during reasonable business hours, and shall be permitted to inspect any filberts held by such handler and all records of the handler with respect to filberts held or disposed of by such handler. Each handler shall furnish all labor necessary to facilitate such inspections as the Secretary or the Board may make of such handler's holdings of any filberts. Each handler shall store filberts in such manner as to facilitate inspection, and shall maintain adequate storage records which will permit accurate identification of all such filberts held.

[24 FR 6185, Aug. 1, 1959. Redesignated at 26 FR 12751, Dec. 30, 1961, and amended at 37 FR 589, Jan. 14, 1972]

§ 982.70 Confidential information.

All reports and records furnished or submitted by handlers to the Board, which include data or information constituting a trade secret or disclosing of the trade position, financial condition, or business operations of the particular handler from whom received, shall be kept in the custody and under the control of one or more employees of the Board, and shall be disclosed to no person except the Secretary.

§ 982.71 Records.

Each handler shall maintain such records of filberts received, held and disposed of by him as may be prescribed by the Board in order to perform its function under this part. Such records shall be retained and be available for examination by author-

ized representatives of the Board or the Secretary for a period of two years after the end of the marketing year in which the transactions occurred.

[40 FR 53228, Nov. 17, 1975]

MISCELLANEOUS PROVISIONS

§ 982.80 Right of the Secretary.

The members of the Board (including successors, alternates, or other persons selected by the Secretary), and any agent or employee appointed or employed by the Board, shall be subject to removal or suspension by the Secretary, in his discretion, at any time. Each and every order, regulation, decision, determination, or other act of the Board shall be subject to the continuing right of the Secretary to disapprove of the same at any time, and, upon such disapproval, shall be deemed null and void except as to acts done in reliance thereon or in compliance therewith.

§ 982.81 Personal liability.

No member or alternate member of the Board, or any employee or agent thereof, shall be held personally responsible, either individually or jointly with others, in any way whatsoever, to any handler or any other person for errors in judgment, mistakes, or other acts either of commission or omission, as such member, alternate member, agent or employee, except for acts of dishonesty.

§ 982.82 Separability.

If any provision of this subpart is declared invalid, or the applicability thereof to any person, circumstance, or thing is held invalid, the validity of the remainder of this subpart or the applicability thereof to any other person, circumstance, or thing shall not be affected thereby.

§ 982.83 Derogation.

Nothing contained in this subpart is, or shall be construed to be, in derogation or in modification of the rights of the Secretary or of the United States to exercise any powers granted by the act or otherwise, or, in accordance with such powers, to act in the premises whenever such action is deemed advisable.

§ 982.84 Duration of immunities.

The benefits, privileges, and immunities conferred upon any person by virtue of this subpart shall cease upon the termination of this subpart, except with respect to acts done under and during the existence of this subpart.

§ 982.85 Agents.

The Secretary may, by a designation in writing, name any person, including any officer or employee of the United States Department of Agriculture, to act as his agent or representative in connection with any of the provisions of this subpart.

§ 982.86 Effective time, termination or suspension.

(a) *Effective time.* The provisions of this subpart, as well as any amendments to this subpart, shall become effective at such time as the Secretary may declare, and shall continue in force until terminated or suspended in one of the ways specified in this section.

(b) *Suspension or termination.* (1) The Secretary may, at any time, terminate the provisions of this subpart by giving at least one day's notice by means of a press release or in any other manner which he may determine.

(2) The Secretary shall terminate or suspend the operation of any or all of the provisions of this subpart whenever he finds that such provisions do not tend to effectuate the declared policy of the act.

(3) The Secretary shall terminate the provisions of this subpart at the end of any marketing year whenever the Secretary finds that such termination is favored by a majority of the producers of filberts who during the preceding marketing year have been engaged in the production for marketing of filberts in the States of Oregon and Washington: *Provided,* That such majority have during such period produced for market more than 50 percent of the volume of such filberts produced for market within said States; but such termination shall be effected only if announced 30 days or

more before the end of the then current marketing year.

(4) The provisions of this subpart shall, in any event, terminate whenever the provisions of the act authorizing them cease to be in effect.

(c) *Proceedings after termination.* (1) Upon the termination of the provisions of this subpart, the members of the Board then functioning shall continue as joint trustees, for the purpose of liquidating the affairs of the Board, of all funds and property then in the possession or under the control of the Board, including claims for any funds unpaid or property not delivered at the time of such termination. Action by said trusteeship shall require the concurrence of a majority of the said trustees.

(2) Said trustees shall continue in such capacity until discharged by the Secretary; shall, from time to time, account for all receipts and disbursements and deliver all property on hand, together with all books and records of the Board and the joint trustees, to such person as the Secretary may direct; and shall, upon the request of the Secretary, execute such assignments or other instruments necessary or appropriate to vest in such person full title and right to all of the funds, property, and claims vested in the Board or the joint trustees pursuant to this subpart.

(3) Any person to whom funds, property, or claims have been transferred or delivered by the Board or its members, pursuant to this section shall be subject to the same obligations imposed upon the members of the said Board and upon said joint trustees.

[24 FR 6185, Aug. 1, 1959. Redesignated at 26 FR 12751, Dec. 30, 1961, and amended at, 46 FR 26040, May 11, 1981]

§ 982.87 Effect of termination or amendment.

(a) Unless otherwise expressly provided by the Secretary, the termination of this subpart or of any regulation issued pursuant to this subpart, or the issuance of any amendment to either thereof, shall not (1) affect or waive any right, duty, obligation, or liability which shall have arisen or which may thereafter arise in connection with any provision of this subpart or any regulation issued under this subpart, or (2) release or extinguish any violation of this subpart or of any regulation issued under this subpart, or (3) affect or impair any right or remedies of the Secretary or of any other person, with respect to any such violation.

(b) All rules and regulations in this part which are in effect immediately prior to this amendment of this subpart and not inconsistent with such amendment shall continue in effect until otherwise prescribed pursuant to this subpart.

§ 982.88 Amendments.

Amendments to this subpart may be proposed, from time to time, by any person or by the Board.

Subpart—Grade and Size Regulation

§ 982.101 Grade requirements for shelled filberts.

(a) Pursuant to § 982.45(a), no handler shall handle any shelled filberts unless such filberts meet the grade requirements for shelled filberts as contained in Exhibit A of this section.

(b) Pursuant to §§ 982.50(a) and 982.51(b), a handler may declare and withhold shelled filberts in lieu of merchantable filberts in satisfaction of the handler's restricted obligation. Shelled filberts so declared and withheld shall, in lieu of the standards prescribed in § 982.50(a)(3), meet the grade requirements contained in Exhibit A of this section.

EXHIBIT A

Grade Requirements for Shelled Filberts

Filbert kernels or portions of filbert kernels shall meet the following requirements:

(1) Well dried and clean;

(2) Free from foreign material, mold, rancidity, decay or insect injury; and

(3) Free from serious damage caused by serious shriveling, or other means.

Tolerances

In order to allow for variations incident to proper grading and handling the following tolerances, by weight, are permitted as specified:

(1) For Foreign Material: 0.02 of one percent, for foreign material.

(2) For Defects: Five percent for kernels or portions of kernels which are below the requirements of this grade, including not more than the following: Two percent for mold, rancidity, decay or insect injury: *Provided,* That not more than one percent shall be for mold, rancidity, or insect injury.

Definitions

(1) "Well dried" means that the kernels are firm and crisp, not containing more than 6 percent moisture.

(2) "Clean" means practically free from plainly visible adhering dirt or other foreign material.

(3) "Foreign material" means any substance other than the filbert kernels, or portions of kernels. (Loose skins, pellicles or corky tissue which have become separated from the kernels shall not be considered as foreign material, provided that this material does not exceed .02 of one percent by weight.)

(4) "Serious damage" means any specific defect described in this section, or any equally objectionable variation of any one of these defects, or any other defects, or any combination of defects, which seriously detracts from the appearance or the edible or marketing quality of the individual portion of the kernel or of the lot as a whole. The following defects shall be considered as serious damage.

(i) "Serious shriveling" means when the kernel is seriously shrunken, wrinkled and tough.

(ii) "Mold" means that there is a visible growth of mold either on the outside or inside of the kernel.

(iii) "Rancidity" means that the kernel is noticeably rancid to the taste. An oily appearance of the flesh does not necessarily indicate a rancid condition.

(iv) "Decay" means that any portion of the kernel is decomposed.

(v) "Insect injury" means that the insect, frass or web is present, or the kernel or portion of kernel show definite evidence of insect feeding.

[47 FR 12611, Mar. 24, 1982, as amended at 48 FR 34015, July 27, 1983]

NOTE: After January 1, 1979, "Budget of Expenses and Rate of Assessment" regulations (e.g., sections .300 through .399) and "Marketing percentage" regulations (e.g., sections .200 through .299) which are in effect for a year or less, will not be carried in the Code of Federal Regulations. For FEDERAL REGISTER citations affecting these regulations, see the "List of CFR Sections Affected" in this volume.

Subpart—Administrative Rules and Regulations

SOURCE: 26 FR 4191, May 16, 1961, unless otherwise noted. Redesignated at 26 FR 12751, Dec. 30, 1961.

§ 982.432 Nominations.

Nominee petitions pursuant to § 982.32(d) may be submitted only by independent growers in the particular district from which an independent grower position on the Board is to be filled and only such growers shall be eligible to sign a grower nominee petition or be nominated for such a member or alternate member position on the Board.

§ 982.446 Inspection documentation.

(a) The Board shall provide all inspection seals, tags, and stamps that are required to be affixed to filbert containers as provided in § 982.46(b).

(b) The required identification shall be affixed to the containers of certified filberts by the handler as soon as practicable after certification, as follows:

(1) If such filberts are packed in bags, a "free" or "restricted" seal, as appropriate, shall be fastened over the closure seam of each bag, except that a tag may be used temporarily as authorized in paragraph (b)(3) of this section.

(2) If such filberts are packed in cartons, each carton shall be marked with a "free" or "restricted" stamp, as appropriate.

(3) Tags shall be used temporarily to identify a lot of certified filberts when held for further processing or packing. The tags shall be affixed to individual units of the lot (e.g., bags, tote boxes, bins, and pallet loads) or to the entire lot. The information on each tag shall identify the filberts covered thereby and shall show, among other things: the quantity, by weight of the filberts; handler's lot number; the date of inspection; whether merchantable or ungraded; whether "restricted"; and the number and type of containers in the lot.

(c) In lieu of the identification requirements prescribed in paragraph (b) of this section for free and restrict-

ed filberts, any handler may, upon application to and approval by the Board, use the following identification on bags (25 pounds, or larger, capacity) and cartons:

(1) The words "This Product Inspected and Certified Per Federal Marketing Order No. 982" shall be contained within an outline of the combined States of Oregon and Washington; and

(2) This identification shall be printed on the upper right quarter of the printed side of a bag; or

(3) This identification shall be printed on the upper right quarter of one of the side panels of a carton.

(d) As used in this section, the term "free filberts" means merchantable filberts which have been inspected and certified and will be handled.

[26 FR 4191, May 16, 1961. Redesignated at 26 FR 12751, Dec. 30, 1961, and amended at 41 FR 34974, Aug. 18, 1976]

§ 982.450 Application of restricted obligation.

(a) Each handler required to withhold restricted filberts pursuant to § 982.50, or § 982.51, shall hold such filberts separate from all other filberts and shall maintain the identify of each lot so withheld.

(b) Each handler making the election pursuant to § 982.50(c) in connection with certified merchantable filberts which have not been handled, shall thereupon give written notification to the Board of the particular election and of the weight and identity of the filberts involved.

(c) Pursuant to § 982.50(d), a handler may withdraw from withholding restricted filberts in excess of his restricted obligation upon advising the Board of the weight and lot identity of the filberts to be withdrawn. When the quantity of restricted filberts to be withdrawn from withholding consists of a part of a lot of ungraded filberts no part of such lot shall be withdrawn unless the remainder of such lot is reinspected and meets the requirements of § 982.51.

§ 982.452 Disposition of restricted filberts.

(a) *Shelling.* (1) Any person desiring to shell restricted filberts during a fiscal year may do so upon being designated by the Board as an authorized sheller for such year. Application for such designation shall be made in duplicate on FCB Form 3 and include, in addition to the conditions specified in § 982.52(a), the following: (i) The location of the applicant's shelling operation; (ii) the number of years he has operated a filbert shelling plant; and (iii) the daily (8-hour) shelling capacity of the plant. Designation of an authorized sheller shall be effected by the board manager signing the application form and returning a signed copy of the form to the applicant. Each such designation shall continue in effect during the particular fiscal year so long as the authorized sheller is in compliance with the requirements and conditions pursuant to § 982.52 applicable to authorized shellers.

(2) When an authorized sheller completes the shelling of a lot of restricted filberts, he shall submit a report thereon to the Board on FCB Form 4 showing: (i) The date shelling was completed; (ii) the inspection certificate or lot number; (iii) the quantity shelled; (iv) the weight of the kernels produced; and (v) the location where the restricted filberts were held immediately prior to shelling.

(b) *Exports.* Any handler who desires to act as agent of the Board in negotiating export sales of certified merchantable restricted filberts may do so upon the execution of an "Export Agreement" wherein the handler agrees, among other things, to negotiate such export sales at not less than such price as the Board may prescribe, and in conformity to and compliance with the other terms and conditions of the Export Agreement.

(c) *Other authorized outlets.* Under the direction or supervision of the Board, a handler may dispose of restricted filberts for charitable purposes and for promoting the consumption of filberts on behalf of the filbert industry in general. The report required under § 982.67(b) following each such disposition shall be accompanied by a certification by the person receiving such filberts from the handler that they will be used for charitable or promotional purposes, as authorized.

§ 982.453 Disposition of small size filberts.

Any inshell filberts that are substandard only because they are small size, as the term "small size" is defined in the Oregon Grades Standards Filberts in Shell, may be disposed of in export in the same manner and under the same conditions and procedures pursuant to § 982.52(b) for sales in export of certified merchantable restricted filberts. Such small size filberts are not eligible for restricted credit.

[26 FR 4191, May 16, 1961. Redesignated at 26 FR 12751, Dec. 30, 1961, and amended at 41 FR 43711, Oct. 4, 1976]

§ 982.454 Sureties acceptable to the Board.

Bonds secured by cash, cashier's or certified checks, or by assets that are entirely separate and apart from the handler named in the bond may be accepted by the Board pursuant to § 982.54(a). As a condition of accepting any surety, the Board may require such financial statements or other information relating to the ability of such surety to guarantee a handler's bond as it deems necessary.

§ 982.455 Exchange of certified merchantable filberts withheld.

Each handler desiring to exchange filberts pursuant to § 982.55 shall prior thereto file a written notification with the Board setting forth for the respective quantities of filberts involved in the exchange, the inspection certificate numbers, quantities, locations, and applicable lot numbers.

§ 982.456 Interhandler transfers.

Each interhandler transfer of filberts pursuant to § 982.56 (a) and (c) may be made upon notification to the Board in triplicate by the receiving handler on FCB Form 9 signed by both the transferring handler and the receiving handler which shall include the following information: (a) Date of transfer; (b) names of the transferring and receiving handlers; (c) locations between which the filberts were transferred; (d) whether uncertified inshell or certified merchantable; (e) net weight of the filberts transferred, by size and variety; (f) the inspection certificate, or lot number covering the filberts; and (g) if certified merchantable, the name of the handler responsible for compliance with the applicable requirements pursuant to this part relating to such filberts.

§ 982.457 Quantity exemption.

Any handler handling up to, but not to exceed, a total of 250 pounds of inshell filberts during any fiscal year, may handle such filberts free from the inspection and certification, restricted obligation, assessment, and reporting requirements of this part.

§ 982.460 Transfer of excess restricted credits.

(a) *Notification.* Each handler having excess restricted credits who wants to transfer all or a portion thereof to another handler or handlers, may notify the Board accordingly. The Board shall make available to all handlers such information on a weekly basis.

(b) *Application.* Each handler who has excess restricted credits which he desires to transfer to another handler may submit such a request to the Board on FCB Form 10. This form shall include: (1) The name and signature of the handler requesting the transfer; (2) the name and signature of the designated handler to whom the transfer is to be made; (3) the amount of excess restricted credits to be transferred; and (4) such other information as may be needed by the Board to enable the Board to effect the requested transfer of the excess restricted credits.

(c) *Transfer.* The Board shall transfer the requested amount of the excess restricted credits from one handler to a designated handler upon receipt of a completed FCB Form 10 together with such information as may be required by this section.

[37 FR 3630, Feb. 18, 1972]

§ 982.461 Late payment and interest charges.

The Board shall impose a late payment charge on any handler failing to pay his assessment within 30 days of the billing date shown on the handler's assessment statement received from the Board. Such amount shall be

shown on the statement as the "Assessment Due". The late payment charge shall be 5 percent of the unpaid balance of that amount. In the event the handler fails to pay the delinquent amount, including the late payment charge, within 60 days following the billing date, an additional 1 percent interest charge shall be applied monthly thereafter to the unpaid balance, including any accumulated interest. Any amount paid by a handler as assessments, including any charges imposed pursuant to this paragraph, shall be credited when the payment is received in the Board's office.

[38 FR 5151, Feb.26, 1973]

§ 982.466 Reports of inshell filberts handled, shelled and withheld.

Each handler shall report to the Board of FCB Form 1 the quantities of inshell filberts handled or withheld for exporting of shelling, and certified shelled filberts withheld since the last report. With respect to any such filberts handled and withheld during October, November, and through the Wednesday subsequent to December 15, such reports shall be submitted each Thursday for weekly shipments through the preceding Wednesday. All other reports shall be submited at the end of each month. The quantities of inshell filberts handled shall be reported by size and the respective quantities of merchantable and ungraded filberts withheld shall be reported separately, and with respect to filberts certified for shelling, or certified kernels withheld, the kernel weight and inshell equivalent weight shall be reported separately.

[45 FR 28081, Apr. 28, 1980]

§ 982.468 Report of filbert receipts, disposition, and inventory.

On or before January 15 and August 5 each handler shall (a) report to the Board on FCB form 7 his receipts and disposition of inshell filberts and production of filbert kernels during the respective preceding periods of August 1 to December 31, and August 1 to July 31, and (b) report to the Board on FCB form 6 his inventory of filberts as of January 1 and August 1, respectively, showing the quantities of inshell filberts separately in terms of certified merchantable, graded uncertified merchantable, restricted, ungraded and substandard. The certified merchantable filberts shall be reported on the basis of whether located within or outside the production area and whether or not the restricted obligation has been met.

§ 982.471 Records.

Each handler shall maintain complete and accurate records showing the receipt, shipment and sale of all filberts handled, used or otherwise disposed of and shall retain such records for the two-year period prescribed in § 982.71. Handlers shall also maintain a current record of all filberts held in inventory.

PART 984—WALNUTS GROWN IN CALIFORNIA

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AUTHORITY: Secs. 1-19, 48 Stat. 31, as amended; 7 U.S.C. 601-674.

Subpart—Order Regulating Handling

SOURCE: 27 FR 9094, Sept. 13, 1962, unless otherwise noted.

DEFINITIONS

§ 984.1 Secretary.

"Secretary" means the Secretary of Agriculture of the United States, or any other officer or employee of the United States Department of Agriculture who is, or who may be, authorized to perform the duties of the Secretary of Agriculture of the United States.

§ 984.2 Act.

"Act" means Public Act No. 10, 73d Congress, as amended and as reenacted and amended by the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 et seq.).

§ 984.3 Person.

"Person" means an individual, partnership, corporation, association, or any other business unit.

§ 984.4 Area of production.

"Area of production" means the State of California.

[41 FR 31542, July 29, 1976]

§ 984.5 Grower.

"Grower" is synonymous with "producer" and means any person engaged in a proprietary capacity in the commercial production of walnuts.

§ 984.6 Board.

"Board" means the Walnut Marketing Board established pursuant to § 934.35.

[39 FR 35328, Oct. 1, 1974]

§ 984.7 Marketing year.

"Marketing year" means the twelve months from August 1 to the following July 31, both inclusive.

§ 984.8 Walnuts.

"Walnuts" means only walnuts of the "English" (Juglans regia) varieties grown in California.

[41 FR 31542, July 29, 1976]

§ 984.9 Inshell walnuts.

"Inshell walnuts" means walnuts the kernels of which are contained in the shell.

§ 984.10 Shelled walnuts.

"Shelled walnuts" means walnut kernels after the shells are removed.

§ 984.11 Merchantable walnuts.

(a) *Inshell.* "Merchantable inshell walnuts" means all inshell walnuts meeting the minimum grade and size regulations effective pursuant to § 984.50.

(b) *Shelled.* "Merchantable shelled walnuts" means all shelled walnuts meeting the minimum grade and size regulations effective pursuant to § 984.50.

[27 FR 9094, Sept. 13, 1962, as amended at 39 FR 35328, Oct. 1, 1974]

§ 984.12 Substandard walnuts.

"Substandard walnuts" means all walnuts (whether inshell or shelled) the kernels of which do not meet the minimum standard prescribed for merchantable shelled walnuts.

§ 984.13 To handle.

"To handle" means to sell, consign, transport, or ship (except as a common or contract carrier of walnuts owned by another person), or in any other way to put walnuts, inshell or shelled, in the current of commerce either within the area of production or from such area to any point outside thereof, or for a manufacturer or retailer within the area of production to purchase directly from a grower: Except, that the term "to handle" shall not include sales and deliveries within the area of production by growers to handlers.

[39 FR 35328, Oct. 1, 1974, as amended at 41 FR 31542, July 29, 1976]

§ 984.14 Handler.

"Handler" means any person who handles inshell or shelled walnuts, categorized as either:

(a) "Cooperative handler" meaning any handler who is a cooperative marketing association of growers; or

(b) "Independent handler" meaning any handler who is not a cooperative marketing association of growers.

[39 FR 35328, Oct. 1, 1974]

§ 984.15 Pack.

"Pack" means to bleach, clean, grade, or otherwise prepare walnuts for market as inshell walnuts.

[39 FR 35328, Oct. 1, 1974]

§ 984.19 Manufacturer.

"Manufacturer" means any person who uses walnuts in the production of bakery goods, ice cream, candy, or other food products, except walnut oil.

§ 984.20 Kernelweight.

"Kernelweight" means the determined weight of the kernels in a quantity of walnuts regardless of their quality.

[39 FR 35328, Oct. 1, 1974]

§ 984.21 Handler carryover.

"Handler carryover" as of any date means all the merchantable walnuts (except those held in satisfaction of a reserve obligation) wherever located, then held by a handler or for his account (whether or not sold), plus (a) the estimated quantity of merchantable inshell walnuts in lots then held by that handler for packing as merchantable inshell walnuts, and (b) the estimated quantity of merchantable shelled walnuts to be produced from shelling stock and unsorted material then held by that handler.

[39 FR 35328, Oct. 1, 1974, as amended at 41 FR 31542, July 29, 1976]

§ 984.22 Trade demand.

(a) *Inshell.* The quantity of merchantable inshell walnuts which the trade will acquire from all handlers during a marketing year for distribution in the United States, Puerto Rico, and the Canal Zone.

(b) *Shelled.* The quantity of merchantable shelled walnuts which the trade will acquire from all handlers during a marketing year for distribution in the United States, Puerto Rico, and the Canal Zone.

[27 FR 9094, Sept. 13, 1962, as amended at 39 FR 35328, Oct. 1, 1974]

§ 984.23 Free walnuts.

"Free walnuts" means walnuts which are included in the free percentage established by the Secretary pursuant to § 984.49.

[39 FR 35328, Oct. 1, 1974]

§ 984.26 Reserve walnuts.

"Reserve walnuts" means those walnuts which are held to meet a reserve obligation.

[41 FR 31542, July 29, 1976]

§ 984.31 Part and subpart.

"Part" means the order regulating the handling of walnuts grown in California, and all rules, regulations, and supplementary orders issued thereunder. This order regulating the handling of walnuts grown in California shall be a "subpart" of such part.

[41 FR 31542, July 29, 1976]

§ 984.32 To certify.

"To certify" means the issuance of a certification of inspection of walnuts by the inspection service.

[41 FR 31542, July 29, 1976]

§ 984.33 Hold.

"Hold" means to maintain possession or keep control of, in proper storage at all times, the kernelweight of certified merchantable walnuts necessary to meet a reserve obligation.

[41 FR 31542, July 29, 1976]

ADMINISTRATIVE BODY

§ 984.35 Walnut Marketing Board.

(a) A Walnut Marketing Board is hereby established consisting of 10 members selected by the Secretary, each of whom shall have an alternate nominated and selected in the same way and with the same qualifications as the member. The members and their alternates shall be selected by the Secretary from nominees submitted by each of the following groups or from other eligible persons belonging to such groups:

(1) Two members to represent cooperative handlers;

(2) Two members to represent independent handlers;

(3) Two members to represent growers who market their walnuts through cooperative handlers;

(4) One member to represent growers who market their walnuts through cooperative handlers or independent handlers, whichever category of such handlers had certified as merchantable more than 50 percent of the kernelweight of all walnuts certified as merchantable by all handlers during the two marketing years preceding the year in which nominations were made—the member representing growers who market their walnuts through independent handlers shall be nominated at large in the State of California;

(5) One member to represent growers from District 1 who market their walnuts through independent handlers; and

(6) One member to represent growers from District 2 who market their walnuts through independent handlers.

(b) The tenth member and alternate shall be selected after the selection of the nine members from the groups specified in paragraph (a) of this section and after the opportunity for such members to nominate the tenth member and alternate. The tenth member and his alternate shall be neither a walnut grower nor a handler.

(c) Grower Districts:

(1) *District 1.* District 1 encompasses the counties in the State of California that lie north of a line drawn on the

south boundaries of San Mateo, Alameda, San Joaquin, Calaveras, and Alpine Counties.

(2) *District 2.* District 2 shall consist of all other walnut producing counties in the State of California south of the boundary line set forth in paragraph (c)(1) of this section.

(3) The Secretary on the basis of a recommendation of the Board or other information may establish different districts within the area of production.

[41 FR 31542, July 29, 1976]

§ 984.36 Term of office.

The term of office of Board members, and their alternates shall be for a period of two years ending on June 30 of odd-numbered years, but they shall serve until their respective successors are selected and have qualified.

[39 FR 35329, Oct. 1, 1974, as amended at 41 FR 31542, July 29, 1976]

§ 984.37 Nominations.

(a) Nominations on behalf of growers who market their walnuts through cooperative handlers in California shall be submitted on a ballot cast by each such handler for its growers. The vote of each such handler shall be weighted by the kernelweight of the walnuts certified as merchantable during the preceding marketing year for each such handler. The person receiving the highest number of votes for the cooperative grower position shall be the nominee.

(b) Nominations on behalf of independent growers in Group 4, whenever such group represents independent growers and Groups 5 and 6, shall be submitted after ballot by such growers pursuant to an announcement by press releases of the Board to the news media in the walnut producing areas. Such releases shall provide pertinent voting information, including the names of candidates and the location where ballots may be obtained. Ballots shall be accompanied by full instructions as to their markings and mailing and shall include the names of incumbents who are willing to continue serving on the Board and such other candidates as may be proposed pursuant to methods established by the Board with the approval of the Secretary. Each grower in Group 4, whenever such group represents independent growers, and Groups 5 and 6, regardless of the number and location of his walnut orchard(s) shall be entitled to cast only one ballot in the nomination and each vote shall be given equal weight. If the independent grower has orchard(s) in both grower districts he shall advise the Board of the district in which he desires to vote. The person receiving the highest number of votes for an independent grower position shall be the nominee.

(c) Nominations for all handler members shall be submitted on ballots mailed by the Board to all handlers in their respective groups. All handlers' votes shall be weighted by the kernelweight of walnuts certified as merchantable by each handler during the preceding marketing year. Each independent handler in California may vote for the independent handler member nominees and their alternates. However, no independent handler shall have more than one person on the Board either as member or alternate member. The person receiving the highest number of votes for an independent and cooperative handler member position shall be the nominee for that position.

(d) The nine members shall nominate one person as member and one person as alternate for the tenth member position. The tenth member and alternate shall be nominated by not less than 6 votes cast by the nine members of the Board.

(e) Nominations in the foregoing manner received by the Board shall be reported to the Secretary on or before June 15 of each odd-numbered year, together with a certified summary of the results of the nominations. If the Board fails to report nominations to the Secretary in the manner herein specified by June 15 of each odd-numbered year, the Secretary may select the members without nomination. If nominations for the tenth member are not submitted by August 1 of any such year, the Secretary may select such member without nomination.

(f) The Board, with the approval of the Secretary, may change these nomination procedures should the Board determine that a revision is necessary.

[39 FR 35329, Oct. 1, 1974, as amended at 41 FR 31542, July 29, 1976]

§ 984.38 Eligibility.

No person shall be selected or continue to serve as a member or alternate to represent one of the groups specified in § 984.35(a) (1) through (6), unless he is engaged in the business he is to represent, or represents, either in his own behalf or as an officer or employee of the business unit engaged in such business. Also, each member or alternate member representing growers in District 1 or District 2 shall be a grower, or officer or employee of the group he is to represent.

[41 FR 31542, July 29, 1976]

§ 984.39 Qualify by acceptance.

Each person selected by the Secretary as a member or alternate of the Board shall, prior to serving, qualify by filing with the Secretary a written acceptance as soon as practicable after being notified of such selection.

[39 FR 35330, Oct. 1, 1974, as amended at 41 FR 31543, July 29, 1976]

§ 984.40 Alternate.

(a) An alternate for a member of the Board shall act in the place and stead of such member in his absence or in the event of his death, removal, resignation, or disqualification, until a successor for his unexpired term has been selected and has qualified.

(b) In the event any member of the Board and his alternate are both unable to attend a meeting of the Board, any alternate for any other member representing the same group as the absent member may serve in the place of the absent member, or in the event such other alternate cannot attend, or there is no such other alternate, such member, or in the event of his disability or a vacancy, his alternate may designate, subject to the disapproval of the Secretary, a temporary substitute to attend such meeting. At such meeting such temporary substitute may act in the place of such member. For the purposes of this paragraph, a cooperative handler group and a cooperative grower group shall be considered the same group.

[27 FR 9094, Sept. 13, 1962, as amended at 41 FR 31543, July 29, 1976]

§ 984.41 Vacancy.

Any vacancy occasioned by the removal, resignation, disqualification, or death of any member of alternate, or any need to select a successor through failure of any person selected as a member or alternate to qualify, shall be recognized by the Board causing a nomination to be made by the appropriate group and certifying to the Secretary a new nominee within 60 calendar days.

[39 FR 35330, Oct. 1, 1974, as amended at 41 FR 31543, July 29, 1976]

§ 984.42 Expenses.

The members and their alternates of the Board shall serve without compensation, but shall be allowed their necessary expenses.

[39 FR 35330, Oct. 1, 1974, as amended at 41 FR 31543, July 29, 1976]

§ 984.43 Powers.

The Board shall have the following powers:

(a) To administer the provisions of this part in accordance with its terms;

(b) To make rules and regulations to effectuate the terms and provisions of this part;

(c) To receive, investigate, and report to the Secretary complaints of violations of this part; and

(d) To recommend to the Secretary amendments to this part.

§ 984.44 Duties.

The duties of the Board shall be as follows:

(a) To act as intermediary between the Secretary and any handler or grower;

(b) To keep minute books and records which will clearly reflect all of its acts and transactions, and such minute books and records shall at any time be subject to the examination of the Secretary;

(c) To furnish to the Secretary a complete report of all meetings and such other available information as he may request;

(d) To appoint such employees as it may deem necessary and to determine

the salaries, define the duties, and fix the bonds of such employees;

(e) To cause the books of the Board to be audited by one or more competent public accountants at least once for each marketing year and at such other times as the Board deems necessary or as the Secretary may request, and to file with the Secretary three copies of all audit reports made;

(f) To investigate the growing, shipping and marketing conditions with respect to walnuts and to assemble data in connection therewith;

(g) To investigate compliance with the provisions of this part; and

(h) To recommend rules and regulations for the purpose of administering this subpart.

§ 984.45 Procedure.

(a) The members of the Board shall select a chairman from their membership, and shall select such other officers and adopt such rules for the conduct of Board business as they deem advisable. The Board shall give the Secretary the same notice of its meetings as is given to members of the Board.

(b) All decisions of the Board, except where otherwise specifically provided, shall be by majority vote of the members present. A quorum of six members shall be required for the conduct of Board business.

(c) The Board may vote by mail or telegram upon due notice to all members. When any proposition is to be voted on by either of these methods, one dissenting vote shall prevent its adoption. The Board, with the approval of the Secretary, shall prescribe the minimum number of votes which must be cast when voting is by either of these methods, and any other procedures necessary to carry out the objectives of this paragraph.

[27 FR 9094, Sept. 13, 1962, as amended at 39 FR 35330, Oct. 1, 1974]

§ 984.46 Research and development.

The Board, with the approval of the Secretary, may establish or provide for the establishment of production research, marketing research and development projects, designed to assist, improve, or promote the marketing, distribution, and consumption or efficient production of walnuts. The expenses of such projects shall be paid from funds collected pursuant to § 984.69.

[39 FR 35330, Oct. 1, 1974]

Marketing Policy

§ 984.48 Marketing estimates and recommendations.

(a) Each marketing year the Board shall hold a meeting, prior to September 20, for the purpose of recommending to the Secretary a marketing policy for such year. Each year such recommendation shall be adopted by the affirmative vote of at least six members of the Board and shall include the following, and where applicable, on a kernelweight basis:

(1) Its estimate of the orchard-run production in the area of production for the marketing year;

(2) Its estimate of the handler carryover on August 1 of inshell and shelled walnuts;

(3) Its estimate of the merchantable and substandard walnuts in the production;

(4) Its estimate of the trade demand for such marketing year for shelled and inshell walnuts, taking into consideration trade carryover, imports, prices, competing nut supplies, and other factors;

(5) Its recommendation for desirable handler carryover of inshell and shelled walnuts on July 31 of each marketing year;

(6) Its recommendation as to the free and reserve percentages to be established for walnuts;

(7) Its recommendation of the percentage of reserve walnuts that may be exported pursuant to § 984.56, when it determines that the quantity of reserve walnuts that may be exported should be limited;

(8) Its opinion as to whether grower prices are likely to exceed parity; and

(9) Its recommendation for change, if any, in grade and size regulations.

[39 FR 35330, Oct. 1, 1974; 39 FR 35999, Oct. 7, 1974, as amended at 41 FR 31543, July 29, 1976]

§ 984.49 Volume regulation.

(a) *Free, reserve, and export percentages.* Whenever the Secretary finds, on the basis of the Board's recommendation or other information, that limiting the quantity of walnuts that may be handled in domestic markets for merchantable free walnuts during a marketing year will tend to effectuate the declared policy of the act, he shall establish a free percentage to prescribe the portion of such walnuts which may be handled as free walnuts, and a reserve percentage to prescribe the portion that must be withheld as reserve walnuts. Whenever the Board recommends an export percentage pursuant to § 984.48(a)(7), the Secretary shall establish a percentage if he finds it would tend to effectuate the declared policy of the act.

(b) *Revision of percentages.* (1) On or before February 15 of the marketing year, the Board may recommend that the free percentage be increased and the reserve percentage be decreased. On the basis of the Board's recommendation or other information the Secretary may establish such revisions. If the reserve percentage is reduced when an export percentage is in effect, an increase shall be made in the export percentage so that the quantity previously authorized for export will not be reduced. If the revised reserve quantity is less than the quantity previously authorized for export the export percentage shall be 100 percent. Upon revision, all reserve obligations that are theretofore accrued on merchantable walnuts certified during such year on the basis of the previously effective percentages shall be adjusted accordingly.

(2) Any time prior to July 1, the Board may recommend an increase in the export percentage, if it finds that there is an insufficient volume of reserve walnuts available for export and additional demand exists, which would not adversely affect the disposition of the oncoming crop. On the basis of the Board's recommendation or other information, the Secretary may establish such revision.

[41 FR 31543, July 29, 1976]

QUALITY CONTROL

§ 984.50 Grade and size regulations.

(a) *Minimum standard for inshell walnuts.* Except as provided in § 984.64, no handler shall handle inshell walnuts unless such walnuts are equal to or better than the requirements of U.S. No. 2 grade and baby size as defined in the then effective United States Standards for Walnuts (Juglans regia) in the Shell. This minimum standard may be modified by the Secretary on the basis of a Board recommendation or other information.

(b) *Minimum standard for shelled walnuts.* Except as provided in § 984.64, no handler shall handle shelled walnuts unless such walnuts are equal to or better than the requirements of the U.S. Commercial grade as defined in the then effective United States Standards for Shelled Walnuts (Juglans regia) and the minimum size shall be pieces not more than 5 percent of which will pass through a round opening $\frac{5}{64}$ inch in diameter. This minimum standard may be modified by the Secretary on the basis of a Board recommendation or other information.

(c) *Effective period.* The minimum standards established pursuant to paragraphs (a) and (b) of this section and the provisions of this part relating to the administration thereof, shall continue in effect irrespective of whether the season average price for walnuts is above the parity level specified in section 2(1) of the Act.

(d) *Additional grade and size regulation.* The Board may recommend to the Secretary additional grade and size regulations in the form of more restrictive minimum standards than those specified in this section. If the Secretary finds on the basis of such recommendation or other information that such additional grade and size regulations would tend to effectuate the declared policy of the act, he shall establish such regulation.

(e) *Minimum requirements for reserve.* The Board, with the approval of the Secretary, may specify the minimum kernel content and related requirements for any lot of walnuts acceptable for disposition for credit

against a reserve obligation: *Provided*, That reserve walnuts exported must meet the requirements of paragraph (a) of this section if inshell, or paragraph (b) of this section if shelled.

[27 FR 9094, Sept. 13, 1962, as amended at 39 FR 35330, Oct. 1, 1974; 41 FR 31543, July 29, 1976]

§ 984.51 Inspection and certification of inshell and shelled walnuts.

(a) Before or upon handling of any walnuts for use as free or reserve walnuts, each handler at his own expense shall cause such walnuts to be inspected to determine whether they meet the then applicable grade and size regulations. Such inspection shall be performed by the inspection service designated by the Board with the approval of the Secretary. Handlers shall obtain a certificate for each inspection and cause a copy of each certificate issued by the inspection service to be furnished to the Board. Each certificate shall show the identity of the handler, quantity of walnuts, the date of inspection, and for inshell walnuts the grade and size of such walnuts as set forth in the United States Standards for Walnuts (Juglans regia) in the Shell. Certificates covering reserve shelled walnuts for export shall also show the grade, size, and color of such walnuts as set forth in the United States Standards for Shelled Walnuts (Juglans regia). The Board, with the approval of the Secretary, may prescribe such additional information to be shown on the inspection certificates as it deems necessary for the proper administration of this part.

(b) Inshell merchantable walnuts certified shall be converted to the kernelweight equivalent at 45 percent of their inshell weight. This conversion percentage may be changed by the Board with the approval of the Secretary.

(c) Upon inspection, all walnuts for use as free or reserve walnuts shall be identified by tags, stamps, or other means of identification prescribed by the Board and affixed to the container by the handler under the supervision of the Board or of a designated inspector and such identification shall not be altered or removed except as directed by the Board. The assessment requirements in § 984.69 shall be incurred at the time of certification.

(d) Whenever the Board determines that the length of time in storage or conditions of storage of any lot of merchantable walnuts which has been previously inspected have been or are such as normally to cause deterioration, such lot of walnuts shall be reinspected at the handler's expense and recertified as merchantable prior to shipment.

[39 FR 35330, Oct. 1, 1974, as amended at 41 FR 31543, July 29, 1976]

§ 984.52 Processing of shelled walnuts.

(a) No handler shall slice, chop, grind, or in any manner change the form of shelled walnuts unless such walnuts have been certified as merchantable or as suitable for processing pursuant to paragraph (b) of this section. The Board shall establish such procedures as are necessary to insure that all such walnuts are inspected and certified prior to any such processing.

(b) Any lot of shelled walnuts which, upon inspection, fails to meet the minimum standard effective pursuant to § 984.50 solely due to excess shriveling may be certified for processing provided that the total amount of shrivel does not exceed 20 percent, by weight, of the lot. All such walnuts must be reinspected after processing and shall be certified as merchantable if the processed material meets the effective minimum standard. The provisions of this paragraph may be modified by the Secretary, upon recommendation of the Board or other information.

Reserve Walnuts

§ 984.54 Establishment of obligation.

(a) *Reserve obligation.* Whenever free and reserve percentages are in effect for a marketing year, each handler shall withhold a kernelweight of certified merchantable walnuts equal to a quantity derived by the application of the reserve percentage to the kernelweight of merchantable walnuts certified. The kernelweight of certified merchantable walnuts which handlers are required to withhold shall be the "reserve obligation." The walnuts han-

died for use as free walnuts by any handler in accordance with the provisions of this part shall be deemed to be that handler's quota fixed by the Secretary within the meaning of section 8(a)(5) of the act.

(b) *Holding requirements.* Each handler shall at all times hold in his possession or under his control in proper storage the kernelweight of certified merchantable walnuts necessary to meet his reserve obligation less: (1) Any quantity which was disposed of by him pursuant to § 984.56; and (2) any quantity for which he is otherwise relieved by the Board of responsibility to so hold walnuts.

[41 FR 31543, July 29, 1976]

§ 984.56 Disposition of reserve walnuts.

(a) *General.* The Board shall have power and authority to sell or dispose of any and all reserve walnuts withheld upon the best terms and at the highest returns obtainable consistent with the ultimate complete disposition of reserve, subject to all conditions of this section. The Board may dispose of reserve walnuts through handlers acting as agents of the Board under the terms and conditions specified by the Board.

(b) *Export.* The Board may export or authorize the disposition in export to the destinations outside the United States, Puerto Rico, and the Canal Zone, the quantity of reserve walnuts permitted to be exported by the export percentage establishment pursuant to § 984.49. Reserve walnuts may be exported by any handler as an agent of the Board under the terms and conditions specified by the Board.

(c) *Pooling.* At any time during the marketing year a handler may deliver reserve walnuts and any substandard walnuts meeting the minimum kernel content requirements effective pursuant to § 984.50(e) to the Board for pooling and crediting against his reserve obligation. Any reserve walnuts that the handler as agent of the Board has not disposed of by the end of the marketing year shall thereafter be delivered to the Board for pooling on demand. The Board shall dispose of these walnuts for use in the following outlets: Government agencies, charitable institutions, poultry or animal feed, walnut oil or other markets noncompetitive with markets for merchantable free walnuts. The Board may rent and operate or arrange the use of facilities for storage and disposition of reserve walnuts delivered to it.

(d) *Crediting.* The kernelweight of walnuts disposed of in accordance with this section shall be credited to the handler's reserve obligation. At any time during the marketing year, upon a handler's written request, the Board shall transfer part or all of the handler's credit in excess of his reserve obligation to any handler he designates.

(e) *Pool proceeds.* The proceeds remaining after the payment of all expenses incurred by the Board in receiving, holding, and disposing of pooled walnuts shall be distributed pro rata by the Board to each handler in proportion to his contribution thereto, measured in kernelweight, or such other basis as the Board may adopt with the approval of the Secretary.

(f) *Rules and regulations.* The Board, with the approval of the Secretary, may prescribe such rules and regulations as are necessary to carry out the provisions of this section.

[41 FR 31544, July 29, 1976]

§ 984.59 Interhandler transfers.

(a) Within the area of production inshell walnuts may be sold or delivered by one handler to another for packing or shelling and the receiving handler shall comply with the regulations made effective pursuant to this part with respect to such walnuts.

(b) A handler may, for the purpose of meeting his reserve obligation, acquire walnuts from another handler, and any assessments, reserve obligations, and inspection requirements with respect to walnuts so transferred, shall be assumed by the buying handler. The Board, with the approval of the Secretary, may establish methods and procedures including necessary reports for such transfers.

(c) Except as provided in paragraphs (a) and (b) of this section, whenever transfers of walnuts are made from one handler to another, the first handler thereof shall comply with all of the regulations effective pursuant to this part.

[39 FR 35332, Oct. 1, 1974, as amended at 41 FR 31544, July 29, 1976]

§ 984.64 Disposition of substandard walnuts.

Substandard walnuts may be disposed of only for manufacture into oil, livestock feed, or such other uses as the Board determines to be noncompetitive with existing domestic and export markets for merchantable walnuts and with proper safeguards to prevent such walnuts from thereafter entering channels of trade in such markets. Wherever free and reserve percentages are in effect, the kernelweight of any walnuts meeting the minimum kernel content requirements effective pursuant to § 984.50(e), may be pooled and the disposition credited to the handler's reserve obligation pursuant to § 984.56. Each handler shall submit, in such form and at such intervals as the Board may determine, reports of (a) his production and holdings of substandard walnuts and (b) the disposition of all substandard walnuts to any other person, showing the quantity, lot, date, name and address of the person to whom delivered, the approved use and such other information pertaining thereto as the Board may specify.

[41 FR 31544, July 29, 1976]

§ 984.65 Compliance.

Except as provided in this subpart, no person shall handle walnuts, inshell or shelled, during any marketing year in which this subpart and any regulations issued by the Secretary hereunder are in effect, unless such person has previously met the obligations imposed by each such regulation and the provisions of this subpart.

§ 984.66 Assistance of the Board in meeting reserve obligation.

The Board may assist any handler in accounting for his reserve obligation and may aid any handler in acquiring walnuts to meet any deficiency in his reserve obligation, or in accounting for, or disposing of reserve walnuts.

[41 FR 31544, July 29, 1976]

§ 984.67 Exemptions.

(a) *Exemption from volume regulation.* Reserve percentages shall not apply to lots of merchantable inshell walnuts which are of mammoth size or larger as defined in the then effective United States Standards for Walnuts in the Shell, or to such quantities as the Board may, with the approval of the Secretary, prescribe.

(b) *Exemptions from assessments, quality, and volume regulations*—(1) *Sales by growers direct to consumers.* Any walnut grower may handle walnuts of his own production free of the regulatory and assessement provisions of this part if he sells such walnuts in the area of production directly to consumers under the following types of exemptions.

(i) At roadside stands and farmers' markets;

(ii) In quantities not exceeding an aggregate of 500 pounds of inshell walnuts or 200 pounds of shelled walnuts during any marketing year (at locations other than those specified in (b)(i) of this section); and

(iii) If shipped by parcel post or express in quantities not exceeding 10 pounds of inshell walnuts or 4 pounds of shelled walnuts to any one consumer in any one calendar day.

(2) *Green walnuts.* Walnuts which are green and which are so immature that they cannot be used for drying and sale as dried walnuts may be handled without regard to the provisions of this part.

(3) *Noncompetitive outlets.* Any person may handle walnuts, free of the provisions of this part, for use by charitable institutions, relief agencies, governmental agencies for school lunch programs, and diversion to animal feed or oil manufacture pursuant to an authorized governmental diversion program.

(c) *Rules and modifications.* The Board may establish, with the approval of the Secretary, such rules, regulations and safeguards and such modifications as will promote the objectives of this subpart.

[27 FR 9094, Sept. 13, 1962, as amended at 41 FR 31544, July 29, 1976]

EXPENSES AND ASSESSMENTS

§ 984.68 Expenses.

The Board is authorized to incur such expenses as the Secretary finds are reasonable and likely to be incurred by it during each marketing year for the maintenance and functioning of the Board, and for such other purposes as the Secretary may, pursuant to this part, determine to be appropriate. The Board shall file a proposed budget of expenses and a rate of assessment with the Secretary as soon as practicable after the beginning of each marketing year.

[41 FR 31544, July 29, 1976]

§ 984.69 Assessments.

(a) *Requirement for payment.* Each handler shall pay the Board, on demand, his pro rata share of the expenses authorized by the Secretary for each marketing year. Each handler's pro rata share shall be the rate of assessment per kernelweight pound of walnuts fixed by the Secretary times the kernelweight of merchantable walnuts he has certified. At any time during or after the marketing year the Secretary may increase the assessment rate as necessary to cover authorized expenses and each handler's pro rata share shall be adjusted accordingly.

(b) *Reserve walnut pool expenses.* The Board is authorized temporary use of funds derived from assessments collected pursuant to paragraph (a) of this section to defray expenses incurred in disposing of reserve walnuts pooled. All such expenses shall be deducted from the proceeds obtained by the Board from the sale or other disposal of pooled reserve walnuts.

(c) *Refunds.* At the end of a marketing year, funds in excess of the marketing year's expenses shall be refunded to handlers from whom collected and each handler's share of such excess funds shall be the amount of assessments he has paid in excess of his pro rata share of the actual expenses of the Board. Excess funds may be used temporarily by the Board to defray expenses of the subsequent marketing year: *Provided,* That each handler's share of such excess shall be made available to him by the Board within five months after the end of the year.

(d) *Termination.* Any money collected from assessments hereunder and remaining unexpended in the possession of the Board upon termination of this part shall be distributed in such manner as the Secretary may direct.

[27 FR 9094, Sept. 13, 1962, as amended at 41 FR 31544, July 29, 1976]

REPORTS, BOOKS, AND OTHER RECORDS

§ 984.71 Reports of handler carryover.

Each handler shall submit to the Board in such form and on such dates as the Board may prescribe, reports showing his carryover of inshell and shelled walnuts.

[39 FR 35332, Oct. 1, 1974]

§ 984.72 Reports of merchantable walnuts handled.

Each handler who handles merchantable walnuts, inshell or shelled, at any time during a marketing year shall submit to the Board in such form and at such intervals as the Board may prescribe, reports showing the quantity so handled and such other information pertinent thereto as the Board may specify.

§ 984.73 Reports of walnut receipts.

Each handler shall file such reports of his walnut receipts from growers in such form and at such times as may be requested by the Board.

[39 FR 35332, Oct. 1, 1974]

§ 984.76 Other reports.

Upon request of the Board made with the approval of the Secretary each handler shall furnish such other reports and information as are needed to enable the Board to perform its duties and exercise its powers under this subpart.

§ 984.77 Verification of reports.

For the purpose of verifying and checking reports filed by handlers or the operations of handlers, the Secretary and the Board through its duly authorized representatives shall have access to any premises where walnuts and walnut records are held. Such

access shall be available at any time during reasonable business hours. Authorized representatives shall be permitted to inspect any walnuts held and any and all records of the handler with respect to matters within the purview of this part. Each handler shall maintain complete records on the receiving, holding, and disposition of both inshell and shelled walnuts. Each handler shall furnish all labor necessary to facilitate such inspections at no expense to the Board or the Secretary. Each handler shall store all walnuts held by him in such manner as to facilitate inspection and shall maintain adequate storage records which will permit accurate identification with respect to inspection certificates of respective lots and of all such walnuts held or disposed of theretofore. The Board, with the approval of the Secretary, may establish any methods and procedures needed to verify reports.

[41 FR 31544, July 29, 1976]

§ 984.78 Certification of reports.

All reports submitted to the Board as required in this part shall be certified to the Secretary and the Board as to the completeness and correctness of the information contained therein.

§ 984.79 Confidential information.

All reports and records submitted by handlers to the Board, which include data or information constituting a trade secret or disclosing the trade position, or financial condition or business operations of the handler shall be kept in custody of one or more employees of the Board and shall be disclosed to no person except the Secretary.

§ 984.80 Books and other records.

Each handler shall maintain such records of walnuts received, held and disposed of by him as may be prescribed by the Board for the purpose of performing its functions under this subpart. Such books and records shall be retained and be available for examination by authorized representatives of the Board and the Secretary for a period of two years after the end of the marketing year in which the recorded transactions are completed.

Miscellaneous Provisions

§ 984.83 Rights of the Secretary.

The members and alternates of the Board and any agent or employee appointed or employed by the Board, shall be subject to removal or suspension by the Secretary, at his discretion, at any time. Each and every decision, determination, or other act of the Board shall be subject to the continuing right of the Secretary to disapprove of the same at any time, and upon such disapproval, shall be deemed null and void.

§ 984.84 Personal liability.

No member or alternate of the Board, nor any employee or agent thereof shall be held personally responsible either individually or jointly with others, in any way whatsoever, to any handler or any person for errors in judgment, mistakes, or other acts either of commission or omission, as such member, alternate employee or agent, except for acts of dishonesty.

[39 FR 35332, Oct. 1, 1974, as amended at 41 FR 31545, July 29, 1976]

§ 984.85 Separability.

If any provision of this subpart is declared invalid, or the applicability thereof to any person, circumstance, or thing is held invalid, the validity of the remainder hereof or the applicability thereof to any other person, circumstance, or thing shall not be affected thereby.

§ 984.86 Derogation.

Nothing contained in this subpart is, or shall be construed to be, in derogation or in modification of the rights of the Secretary or of the United States to exercise any powers granted by the act or otherwise, or in accordance with such powers, to act in the premises whenever such action is deemed advisable.

§ 984.87 Duration of immunities.

The benefits, privileges, and immunities conferred upon any person by virtue of this subpart shall cease upon

the termination hereof except with respect to acts done under and during the existence hereof.

§ 984.88 Agents.

The Secretary may, by a designation in writing, name any person, including any officer or employee of the Government, or name any subdivision of the United States Department of Agriculture, to act as his agent or representative in connection with any of the provisions of this subpart.

§ 984.89 Effective time and termination.

(a) *Effective time.* The provisions of this subpart shall become effective at such time as the Secretary may declare above his signature attached to this subpart, and shall continue in force until terminated in one of the ways hereinafter specified.

(b) *Termination.* (1) The Secretary may, at any time, terminate the provisions of this subpart by giving at least one day's notice by means of a press release or in any other manner which he may determine.

(2) The Secretary may terminate or suspend the operation of any or all of the provisions of this subpart, whenever he finds that such provisions do not tend to effectuate the declared policy of the act.

(3) The Secretary shall terminate the provisions of this subpart at the end of any marketing year whenever he finds that such termination is favored by a majority of the producers of walnuts who during the preceding marketing year have been engaged in the production for market of walnuts in the State of California: *Provided,* That such majority have during such period produced for market more than 50 percent of the volume of such walnuts produced for market within said States, but such termination shall be effected only if announced on or before July 1 of the then current marketing year.

(4) The provisions of this subpart shall, in any event, terminate whenever the provisions of the act authorizing them cease to be in effect.

(c) *Proceedings after termination.* (1) Upon the termination of the provisions of this subpart, the members of the Board then functioning shall continue as joint trustees, for the purpose of liquidating the affairs of the Board, of all funds and property then in the possession or under the control of the Board, including claims for any funds unpaid or property not delivered at the time of such termination. Action by said trusteeship shall require the concurrence of a majority of the said trustees.

(2) Said trustees shall continue in such capacity until discharged by the Secretary; shall from time to time, account for all receipts and disbursements and deliver all property on hand, together with all books and records of the Board and the joint trustees to such person as the Secretary may direct; and shall, upon the request of the Secretary, execute such assignments or other instruments necessary or appropriate to vest in such person full title and right to all of the funds, property, and claims vested in the Board or the joint trustees pursuant hereto.

(3) Any person to whom funds, property or claims have been transferred or delivered by the Board or its members, pursuant to this section, shall be subject to the same obligation imposed upon the members of the said Board and upon said joint trustees.

[27 FR 9094, Sept. 13, 1962, as amended at 41 FR 31545, July 29, 1976]

§ 984.90 Effect of termination or amendment.

Unless otherwise expressly provided by the Secretary, the termination of this subpart or of any regulation issued pursuant to this subpart, or the issuance of any amendment to either thereof, shall not (a) affect or waive any right, duty, obligation, or liability which shall have arisen or which may thereafter arise in connection with any provision of this subpart or any regulation issued under this subpart, or (b) release or extinguish any violation of this subpart or of any regulation issued under this subpart, or (c) affect or impair any rights or remedies of the Secretary or of any other person, with respect to any such violation.

NOTE: After January 1, 1979, "Budget of Expenses and Rate of Assessment" regula-

tions (e.g., sections .300 through .399) and "Marketing percentage" regulations (e.g., sections .200 through .299) which are in effect for a year or less, will not be carried in the Code of Federal Regulations. For FEDERAL REGISTER citations affecting these regulations, see the "List of CFR Sections Affected" in this volume.

Subpart—Administrative Rules and Regulations

§ 984.437 Methods for proposing names of additional candidates to be included on walnut growers' nomination ballots.

(a) Whenever the grower member position specified in § 984.35(a)(4) is assigned to growers who marketed their walnuts through independent handlers, any ten or more such growers who marketed an aggregate of 500 or more tons of walnuts through those handlers during the marketing year preceding the year in which Board nominations are held, may petition the Board to include on the nomination ballot the name of an eligible candidate for this position, and the name of an eligible candidate to serve as his alternate. The names of the eligible candidates proposed pursuant to this paragraph shall be included on the ballot together with the names of any incumbents who are willing to continue serving on the Board.

(b) Any ten or more growers eligible to serve in the grower member positions specified in § 984.35(a)(5) and (6) and who marketed an aggregate of 500 or more tons of walnuts through independent handlers during the marketing year preceding the year in which Board nominations are held, may petition the Board to include on the nomination ballot for a district the name of an eligible candidate for the applicable position, and the name of an eligible candidate to serve as his alternate. The names of the eligible candidates proposed pursuant to this paragraph shall be included on the ballot together with the names of any incumbents who are willing to continue serving on the Board.

(c) Petitions made pursuant to paragraphs (a) and (b) of this section shall be on forms supplied by the Board and filed no later than April 1 of the nomination year.

[41 FR 54476, Dec. 14, 1976]

§ 984.445 Procedures for voting by mail or telegram.

Whenever the Board votes upon any proposition by mail or telegram at least six members or alternates acting as members must vote and one dissenting vote shall prevent its adoption. Each proposition to be voted upon by either of these methods shall specify a time limit for members to vote, after which the alternates shall be given the opportunity to vote.

[40 FR 22267, May 22, 1975]

§ 984.450 Grade and size regulations.

(a) *Minimum kernel content requirements for inshell walnuts for reserve disposition credit.* For the purposes of §§ 984.54 and 984.56, no lot of inshell walnuts may be held, exported, or disposed of for use by government agencies or charitable institutions unless it meets the minimum requirements for merchantable inshell walnuts effective pursuant to § 984.59(a). The disposition of any lot of inshell walnuts pursuant to § 984.64 having at least a certified kernelweight of not less than 10 percent of the inshell weight of the lot may be credited against a handler's reserve obligation.

(b) *Minimum kernel content requirements for shelled walnuts for reserve disposition credit.* For the purposes of §§ 984.54 and 984.56, no lot of shelled walnuts may be held, exported, or disposed of for use by government agencies or charitable institutions unless it meets the minimum requirements for merchantable shelled walnuts effective pursuant to § 984.50(b). The disposition of any lot of shelled walnuts pursuant to § 984.64 having at least a certified kernelweight of kernels six sixty-fourths of an inch or larger of not less than 10 percent of the total weight of the lot may be credited against a handler's reserve obligation: *Provided,* That such minimum kernel content requirements shall not apply to any lot of walnut meal certified by the designated inspection service as having been derived from chopping, slicing, or dicing merchantable shelled walnuts.

[41 FR 54476, Dec. 14, 1976]

§ 984.451 Inspection and certification of inshell and shelled walnuts.

(a) The inspection service shall be the DFA of California.

(b) Each handler shall make each container of each lot of walnuts accessible for sampling and sealing or stamping in connection with the inspection and certification of any lot of inshell or shelled walnuts.

(c) Inshell and shelled walnuts for export pursuant to § 984.56(b) shall have been inspected and certified not more than 60 days prior to shipment from the handler's plant.

[41 FR 54476, Dec. 14, 1976]

§ 984.452 Certification of shelled walnuts for processing.

Each certificate issued for shelled walnuts for processing pursuant to § 984.52(b) shall bear the notation "Certified for Processing Only." Shelled walnuts so certified for processing may not be processed by anyone other than the handler obtaining such certificate.

[28 FR 1863, Feb. 28, 1963]

§ 984.456 Disposition of reserve walnuts and walnuts used for reserve disposition credit.

(a) Beginning August 1 of any marketing year, a handler may become an agent of the Board to dispose of reserve walnuts of such marketing year. The agency shall be established upon execution of an "Agency Agreement for Reserve Walnuts" setting forth the terms and conditions specified by the Board for the sale of reserve walnuts in authorized outlets.

(b) Any handler who desires to transfer disposition credit in excess of his reserve obligation to another handler shall submit a request to the Board for such transfer on WMB Form No. 17 signed by both handlers and the Board shall credit such transfer.

(c) Any reserve walnuts that a handler has not disposed of by the end of the marketing year shall be delivered to the Board for pooling on demand. The Board may delay such demand with respect to reserve walnuts for which the handler has agreed to undertake disposition pursuant to the Board's authority. Each lot of reserve or substandard walnuts delivered to the Board for pooling and disposition shall be separately weighed at the handler's expense by a public weighmaster either upon removal from the handler's premises or in transit to Board storage facilities or diversion point. A copy of each weighmaster's certificate showing the net weight of the walnuts shall be forwarded to the Board by the handler. Walnuts delivered to the Board shall be delivered F.O.B. handler's warehouse or point of storage.

[41 FR 54476, Dec. 14, 1976]

§ 984.464 Disposition of substandard walnuts.

(a) Whenever free and reserve percentages are in effect during a marketing year substandard walnuts meeting the requirements of § 984.450 may be delivered by a handler to the Board for pooling at any time during the year and the disposition credited to the handler's reserve obligation.

(b) The Board shall maintain a list of approved crushers, livestock feed manufacturers and livestock feeders, and of the locations of the facilities within the area of production to which substandard walnuts may be shipped. The Board may deny approval to any applicant or remove any approved crusher, feed manufacturer, or feeder from the list when such denial or removal is deemed necessary to insure control of substandard walnut disposition or the Board determines that substandard walnuts are not shipped to such facilities. Substandard walnuts disposed of to an approved crusher, livestock feed manufacturer, or livestock feeder, may only be shipped directly to an approved location where the crushing, feed manufacture, or feeding is to take place. Applications for approval to crush, manufacture livestock feed, or feed substandard walnuts shall be submitted to the Board on a form prescribed by the Board and which includes the location and a description of the disposal facilities to be used and a certification to the Board and the Secretary of Agriculture that the applicant will:

(1) Crush, manufacture feed, or feed such walnuts at the location;

(2) Use such walnuts for no other purpose than for crushing into oil, manufacturing into livestock feed, or livestock feeding;

(3) Permit such inspection of his premises and of walnuts received and held by him, and such examination of his books and records covering walnut transactions as the Board may require;

(4) Keep a record of his receipts, holdings, and use of substandard walnuts available for examination by authorized representatives of the Board and the U.S. Department of Agriculture for a period of two years after the end of the marketing year in which the recorded transactions are completed; and

(5) Make such reports, certified to the Board and the Secretary as to their correctness, as the Board may require.

(c) Each handler who disposes of substandard walnuts to an approved crusher, livestock feed manufacturer or livestock feeder shall upon shipment report to the Board on WMB Form No. 20, the quantities disposed of or shipped.

[41 FR 54476, Dec. 14, 1976]

Reports

§ 984.471 Reports of handler carryover.

Reports of handler carryover as of August 1, January 1, and April 1 of each marketing year shall be submitted to the Board on WMB Form No. 4 for inshell walnuts and on WMB Form No. 5 for shelled walnuts, on or before August 15, January 15, and April 15 respectively, of that marketing year.

[40 FR 22267, May 22, 1975]

§ 984.472 Reports of merchantable walnuts shipped.

(a) Reports of merchantable walnuts shipped during a month shall be submitted to the Board on WMB Form No. 6 not later than the 5th day of the following month. Such reports shall include all shipments during the preceding month and shall show for inshell and shelled walnuts (1) the quantity shipped, (2) whether they were shipped into domestic or export channels, and (3) for exports, the quantity by country of destination. If a handler makes no shipments during any month he shall submit a report marked "None". If a handler has completed his shipments for the season he shall mark the report "Completed", and he shall not be required to submit any additional WMB Form No. 6 reports during the remainder of that marketing year.

(b) Reports of walnuts purchased directly from growers by handlers who are manufacturers or retailers shall be submitted to the Board on WMB Form No. 6, not later than the 5th day of the month following the month in which the walnuts were purchased. Such reports shall show the quantity of walnuts purchased and the quantity inspected and certified as merchantable walnuts.

[41 FR 54476, Dec. 14, 1976]

§ 984.473 Report of walnut receipts.

Each handler shall file a report of his walnut receipts from growers on or before January 15 of each marketing year on forms supplied by the Board.

[40 FR 22267, May 22, 1975]

§ 984.480 Books and other records.

Each handler shall maintain true and complete records of all inshell and shelled walnuts and walnut material, by categories, received, held, or disposed of by him. The records shall be maintained in such form as to permit verification of all transactions involved and shall be made available during normal business hours to authorized representatives of the Board or the Secretary of Agriculture. These records shall include the following:

(a) The names and addresses of the persons from whom received, and the quantities received from each such person;

(b) The names and addresses of the persons to whom disposal is made, and the quantities disposed of to each such person;

(c) The quantities used by the handler for such purposes as manufacturing, production of oil, and livestock feeding; and

(d) The quantities held on August 1, January 1, and April 1 of each marketing year.

[40 FR 22268, May 22, 1975]

PART 985—MARKETING ORDER REGULATING THE HANDLING OF SPEARMINT OIL PRODUCED IN THE FAR WEST

Subpart—Order Regulating Handling

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AUTHORITY: Secs. 1-19, 48 Stat. 31, as amended (7 U.S.C. 601-674).

SOURCE: 45 FR 25040, Apr. 14, 1980, unless otherwise noted.

Subpart—Order Regulating Handling

DEFINITIONS

§ 985.1 Secretary.

"Secretary" means the Secretary of Agriculture of the United States, or any other officer or employee of the U.S. Department of Agriculture who is, or who may be, authorized to perform the duties of the Secretary of Agriculture of the United States.

§ 985.2 Act.

"Act" means Public Act No. 10, 73d Congress, as amended, and reenacted and amended by the Agricultural Marketing Agreement Act of 1937, as amended (Secs. 1-19, Stat. 31, as amended; 7 U.S.C. 601-674).

§ 985.3 Person.

"Person" means an individual, partnership, corporation, association, or any other business unit.

§ 985.4 Spearmint oil.

"Spearmint oil", hereinafter referred to as "oil", means essential oil extracted by distillation from plants, grown in the production area, of the genus Mentha, species Cardiaca (commonly referred to as Scotch Spearmint), Spicata (commonly referred to as Native Spearmint), or such other species, grown in the production area, that produce a spearmint flavored oil. Oil shall be segregated into the following classes:

"Class 1"—Oil extracted from the first cutting of Scotch Spearmint.
"Class 2"—Oil extracted from the second cutting of Scotch Spearmint.
"Class 3"—Oil extracted from Native Spearmint.
"Class 4"—Oil which has a spearmint flavor, extracted from plants other than Scotch or Native Spearmint.

The Committee, with the approval of the Secretary, may change these classes to recognize new, or delete obsolete, classes.

§ 985.5 Production area.

"Production area" means all the area within the States of Washington, Idaho, Oregon, and that portion of California and Nevada north of the 37th parallel and that portion of Montana and Utah west of the 111th meridian. The area shall be divided into the following districts:

(a) District 1. The State of Washington.

(b) District 2. The State of Idaho and that portion of the States of Montana, Nevada, and Utah included in the production area.

(c) District 3. The State of Oregon and that portion of the State of California included in the production area.

§ 985.6 Producer.

"Producer" is synonymous with "grower" and means any person engaged in a proprietary capacity in the commercial production of oil or who causes it to be produced.

§ 985.7 Handler.

"Handler" means any person who handles oil.

§ 985.8 Handle.

"Handle" means to prepare oil for market, acquire oil from a producer, use oil commercially of own production, or sell, transport, or ship (except as a common or contract carrier of oil owned by another), or otherwise place oil into the current of commerce within the production area or from the area to points outside thereof: *Provided*, That (a) the preparation for market of salable oil by producers who are not dealers or users, (b) the sale or transportation of salable oil by a producer to a handler of record within the production area, or (c) the transfer of excess oil by the producer to another producer to enable that producer to fill a deficiency in an annual allotment, or (d) the delivery of excess oil by the producer to the Committee or its designees, shall not be construed as handling.

§ 985.9 Marketing year.

"Marketing year" means the 12 months from June 1 to the following May 31, inclusive, or such other period as the Committee, with the approval of the Secretary, may establish.

§ 985.10 Crop.

"Crop" means that oil produced by a producer during the marketing year.

§ 985.11 Salable oil.

"Salable oil" means that oil which is free to be handled.

§ 985.12 Salable quantity.

"Salable quantity" means the total quantity of each class of oil which handlers may purchase from, or handle on behalf of, producers during a marketing year.

§ 985.13 Annual allotment.

"Annual allotment" means that portion of the salable quantity prorated to a producer.

§ 985.14 Part and subpart.

"Part" means the order regulating the handling of oil grown in the production area, and all rules and regulations issued thereunder. The order shall be a "subpart" of such part.

ADMINISTRATIVE COMMITTEE

§ 985.20 Establishment and membership.

A Spearmint Oil Administrative Committee is hereby established (hereinafter referred to as "Committee") and shall consist of eight members, each of whom shall have an alternate, to administer the terms and provisions of this part. Four of the members and alternates shall be producers in District 1; two members and alternates shall be producers in District 2; and one member and alternate shall be a producer in District 3. One member and alternate shall represent the public.

§ 985.21 Eligibility.

Each member and alternate member of the Committee shall be, at the time of selection and during the term of office, a producer, or an officer or employee of a producer, in the district for which selected: *Provided,* That these requirements should not apply to the public member and alternate member.

§ 985.22 Term of office.

The term of office of each member and alternate member of the Committee shall be for two calendar years: *Provided,* That one-half of the initial members and alternates shall serve for terms ending December 31, 1980, and one-half of the initial members and alternates shall serve for terms ending December 31, 1981. Members and alternates shall serve in such capacity for the term of office for which they are selected and have qualified and until their respective successors are selected and have qualified. No member shall serve more than two consecutive terms as member and no alternate shall serve more than two consecutive terms as alternate.

§ 985.23 Nominations.

(a) *Procedure.* (1) Nominations for producer members of the Committee and their alternates shall be made at nomination meetings of producers in each District. Such meetings shall be held at such times (on or before November 1 of each year) and places as the Committee shall designate. One nominee shall be elected for each position to be filled. The names and addresses of each nominee shall be submitted to the Secretary not later than December 1 of each year.

(2) Only producers, including duly authorized officers or employees of producers present and eligible to serve as producer members of the Committee, shall participate in the nomination. If a producer produces oil in more than one district, the producer shall select the district in which that producer will participate and notify the Committee of the choice.

(3) Should the Committee find it impractical to hold nomination meetings, nominations may be submitted to the Secretary based on the results of balloting by mail. Ballots to be used may contain the names of candidates and a blank space for write-in candidates for each position, together with voting instructions. The eligible person receiving the highest number of votes for a member or alternate position shall be the nominee for that position.

(4) The producer members of the Committee shall nominate the public member and alternate and member at the first meeting following the selection of members for a new term of office.

(b) *Initial members.* As soon as practicable following the effective date of this subpart, the Secretary shall hold, or cause to be held, nomination meetings of producers in each district to nominate the initial members of the Committee.

(c) The Committee with the approval of the Secretary shall issue rules and regulations necessary to carry out the provisions of this section or to change the procedures in this section in the event they are no longer practical.

§ 985.24 Selection.

Committee members shall be selected by the Secretary from nominees submitted by the Committee or from among other eligible persons. Each person so selected shall qualify by filing a written acceptance with the Secretary prior to assuming the duties of the position.

§ 985.25 Alternate members.

An alternate for a member shall act in the place of such member (a) in the member's absence, (b) in the event of the member's death, removal, resignation, or disqualification, until a successor for the member's unexpired term has been selected and has qualified, or (c) when requested and designated by the member.

§ 985.26 Vacancies.

To fill any vacancy occasioned by the failure of any person appointed as a member or as an alternate member of the Committee to qualify, or in the event of the death, removal, resignation, or disqualification of any member or alternate member of the Committee, a successor to fill the unexpired term shall be nominated and appointed in the manner specified in §§ 985.23 and 985.24. If the names of the nominees to fill any such vacancy are not made available to the Secretary within 30 days after such vacancy occurs, the Secretary may fill such vacancy without regard to nominations, which appointment shall be made on the basis of representation provided for in § 985.20.

§ 985.27 Powers.

The Committee shall have the following powers:

(a) To administer this subpart in accordance with its terms and provisions;

(b) To make rules and regulations to effectuate the terms and provisions of this subpart;

(c) To receive, investigate, and report to the Secretary complaints of violations of this part; and

(d) To recommend to the Secretary amendments to this subpart.

§ 985.28 Duties.

The Committee shall have, among others, the following duties;

(a) To select from among its membership such officers and adopt such rules or by-laws for the conduct of its meetings as it deems necessary;

(b) To appoint such employees as it may deem necessary, and to determine the compensation and to define the duties of each employee;

(c) To appoint such subcommittees and consultants as it may deem necessary;

(d) To keep minutes, books, and records which will reflect all of the acts and transactions of the Committee and which shall be subject to examination by the Secretary;

(e) To prepare periodic statements of the financial operations of the Committee and to make copies of each such statement available to producers and handlers for examination at the office of the Committee;

(f) To cause the books of the Committee to be audited by a certified public accountant at such times as the Committee may deem necessary, or as the Secretary may request, to submit copies of each audit report to the Secretary, and to make available a copy which does not contain confidential data for inspection at the offices of the committee by producers and handlers;

(g) To act as intermediary between the Secretary and any producer or handler;

(h) To investigate and assemble data on the growing, handling, and marketing conditions with respect to oil;

(i) To submit to the Secretary such available information as may be requested or that the Committee may deem desirable and pertinent;

(j) To notify producers and handlers of all meetings of the Committee to consider recommendations for regulations and of all regulatory actions taken affecting producers and handlers;

(k) To give the Secretary the same notice of meetings of the Committee and its subcommittees as is given to its members;

(l) To investigate compliance and use means available to prevent violations of the provisions of this part;

(m) With the approval of the Secretary, to redefine the districts into which the production area is divided and to reapportion the representation of any district on the Committee: *Provided,* That such changes shall reflect insofar as practical, shifts in oil production within the production area and numbers of producers; and

(n) To establish with the approval of the Secretary such rules and regula-

tions as are necessary or incidental to administration of this subpart, as are consistent with its provisions, and as would tend to accomplish the purposes of this subpart and the act.

§ 985.29 Procedure.

(a) At an assembled meeting, all votes shall be cast in person and seven members of the Committee shall constitute a quorum. Decisions of the Committee shall require the concurring vote of at least six members. If both a Committee member and appropriate alternate are unable to attend a Committee meeting, the Committee may designate any other alternate from the same district who is present at the meeting to serve in the member's place.

(b) The Committee may vote by mail, telephone, telegraph, or other means of communication: *Provided,* That each proposition is explained accurately, fully, and identically to each member. All votes shall be confirmed promptly in writing. Seven concurring votes and no dissenting votes shall be required for approval of a Committee action by such method.

§ 985.30 Expenses and compensation.

Members of the Committee, their alternates, subcommittees including any special subcommittees, shall serve without compensation but shall receive such allowances for necessary expenses, incurred in performing their duties, as may be approved by the Committee.

Research

§ 985.31 Research and development projects.

The Committee, with the approval of the Secretary, may establish or provide for the establishment of production research, marketing research and development projects designed to assist, improve, or promote the marketing, distribution and consumption or efficient production of oil. The Committee shall consider ongoing research, by industry and grower organizations, in making its recommendations. The expense of such projects shall be paid from funds collected pursuant to § 985.41.

Expenses and Assessments

§ 985.40 Expenses.

The Committee is authorized to incur such expenses as the Secretary finds are reasonable and likely to be incurred by it for such purposes as the Secretary may, pursuant to this subpart, determine to be appropriate, and for the maintenance and functioning of the Committee during each marketing year. The Committee shall submit to the Secretary a budget for each marketing year, including an explanation of the items appearing therein, and a recommendation as to the rate of assessment for such year.

§ 985.41 Assessments.

(a) *Requirements for payment.* Each person who first handles salable oil shall pay to the Committee, upon demand, that handler's pro rata share of the expenses authorized by the Secretary for each marketing year. Each handler's pro rata share shall be the rate of assessment fixed by the Secretary times the quantity of oil which the handler handles as the first handler thereof. The payment of assessments for the maintenance and functioning of the Committee and for such purposes as the Secretary may, pursuant to this subpart, determine to be appropriate, may be required under this part throughout the period it is in effect, irrespective of whether particular provisions thereof are suspended or become inoperative.

(b) *Rate of assessment.* The Secretary shall fix the rate of assessment to be paid by each handler. At any time during or after the marketing year, the Secretary may increase the rate of assessment as necessary to cover authorized expenses. Such increase shall be applied to all oil handled during the applicable marketing year. In order to provide funds for the administration of this part before sufficient operating income is available from assessments, the Committee may accept advance assessments and may also borrow money for such purpose. Advance assessments received from a handler shall be credited toward assessments levied against the handler during the marketing year.

§ 985.42 Accounting.

(a) *Excess funds.* At the end of a marketing year, funds in excess of the year's expenses may be placed in an operating reserve not to exceed approximately one marketing year's operational expenses or such lower limits as the Committee, with the approval of the Secretary, may establish. Funds in such reserve shall be available for use by the Committee for expenses authorized pursuant to § 985.40. Funds in excess of those placed in the operating reserve shall be refunded to handlers: *Provided,* That any sum paid by a first handler in excess of that handler's pro rata share of the expenses during any marketing year may be applied by the Committee at the end of such marketing year to any outstanding obligations due the Committee from such person. Each handler's share of such excess funds shall be the amount of assessments paid in excess of that handler's pro rata share.

(b) *Disposition of funds upon termination of order.* Upon termination of this part, any funds not required to defray the necessary expenses of liquidation shall be disposed of in such manner as the Secretary may determine to be appropriate: *Provided,* That to the extent practicable, such funds will be returned pro rata to the first handler from whom such funds were collected.

VOLUME LIMITATIONS

§ 985.50 Marketing policy.

(a) The Committee shall meet on or before January 15 of each year to adopt a marketing policy for the ensuing marketing year or years. As soon as is practical following the meeting or meetings, the Committee shall submit to the Secretary recommendations for volume regulations deemed necessary to meet market requirements and establish orderly marketing conditions. Additional reports shall be submitted to the Secretary of the Committee subsequently adopts a new or revised policy because of changes in the demand and supply situation with respect to the various classes of oil.

(b) In determining such marketing policy, Committee consideration shall include but not be limited to:

(1) The estimated quantity of salable oil of each class held by producers and handlers;

(2) The estimated demand for each class of oil;

(3) Prospective production of each class of oil;

(4) Total of allotment bases of each class of oil for the current marketing year and the estimated total of allotment bases of each class for the ensuing marketing year;

(5) The quantity of reserve oil, by class, in storage;

(6) Producer prices of oil, including prices for each class of oil;

(7) General market conditions for each class of oil, including whether the estimated season average price to producers is likely to exceed parity.

(c) Notice of the marketing policy recommendations for a marketing year and any later changes shall be announced publicly by the Committee, and be submitted promptly to the Secretary and all producers and handlers. The Committee shall publicly announce its marketing policy or revision thereof and notice and contents thereof shall be submitted to producers and handlers by bulletins or through appropriate media.

(d) As soon as practicable following the effective date of this subpart and the organization of the Committee, the Committee may adopt a marketing policy for the 1980–81 marketing year.

§ 985.51 Recommendations for volume regulation.

(a) If the Committee's marketing policy considerations indicate a need for limiting the quantity of oil of each class marketed, the Committee shall recommend to the Secretary a salable quantity and allotment percentage for the ensuing marketing year. Such recommendations shall be made prior to February 15, or such other date as the Committee, with the approval of the Secretary, may establish.

(b) At any time during the marketing year for which the Secretary, pursuant to § 985.52(a), has established a salable quantity and an allotment per-

centage for each class of oil, the Committee may recommend to the Secretary that such quantity be increased with an appropriate increase in the allotment percentage. Each such recommendation, together with the Committee's reason for such recommendation, shall be submitted promptly to the Secretary.

(c) As soon as practical following the effective date of this subpart and the organization of the Committee, the Committee may recommend a salable quantity for the 1980-81 marketing year.

§ 985.52 Issuance of volume regulation.

(a) Whenever the Secretary finds, on the basis of the Committee's recommendation or other information, that limiting the total quantity of a class of oil of any crop that handlers may purchase from or handle on behalf of producers during a marketing year, would tend to effectuate the declared policy of the act, the Secretary shall establish the salable quantity for that oil.

The salable quantity shall be prorated among producers by applying an allotment percentage to each producer's allotment base for that class of oil. The allotment percentage shall be established for each class of oil by dividing the salable quantity by the total of all producers' allotment bases for the same class of oil.

(b) When an allotment percentage for a class of oil is established for any marketing year, no handler shall purchase from or handle on behalf of producers any oil of that class during such year unless:

(1) It is, at the time of handling, within the unused portion of a producer's annual allotment, and

(2) Such handler notifies the Committee of the handling in such manner as it may prescribe.

§ 985.53 Allotment base.

(a) *Initial issuance.* Each producer desiring an allotment base for one or more classes of oil shall register with the Committee and furnish to it, on forms provided by the Committee, a report of the number of pounds of each class of oil sold during each of the marketing years of 1977, of 1978, and of 1979, which is the representative base period, and the number of pounds of each class of oil currently available for sale and the location of such oil, the name and address of each handler, the quantity of oil by class sold to each handler, the acreage and location of each year's production of spearmint, and any additional information requested by the Committee. A producer who has changed or changes identity from an individual producer to a partnership or corporate producer, or from a partnership to a corporate or individual producer, or from a corporate to a partnership or individual producer, may for the purpose of establishing the initial and subsequent allotment base, register with the Committee as one and the same person.

(b)(1) Initially, the allotment base for each class of oil shall be established by the Committee for each registered producer, at the option of such producer, as follows:

(i) The average annual number of pounds of oil of that class sold during any two marketing years of the representative base period; or

(ii) The average annual number of pounds of that class of oil sold during the representative period plus 33⅓ percent of oil of that class currently available for sale; or

(iii) The quantity of that class of oil sold during the 1979 marketing year, plus the quantity of that class of oil currently available for sale.

(2) If a producer has spearmint planted by February 27, 1979, but has no sales history during the representative period, the producer's allotment base shall be established by multiplying its acreage to be harvested for spearmint oil by the average amount of oil per acre sold in the allotment base of other producers in the state or area, whichever is more representative, in which the acreage is located: *Provided,* That, the Committee shall review and adjust these allotment bases in accordance with paragraph (c) of this section on the basis of the producer's sales of spearmint oil.

(c) Periodically, but at least once every five years, the Committee shall review and adjust each producer's allotment base to recognize changes and trends in production and demand. Any such adjustment shall be made in ac-

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cordance with a formula prescribed by the Committee with the approval of the Secretary.

(d)(1) Beginning with the 1982-83 marketing year, the Committee annually shall make additional allotment bases available for each class of oil in the amount of no more than 1 percent of the total allotment base for that class of oil. Fifty percent of these additional allotment bases shall be made available for new producers and 50 percent made available for existing producers.

(2) Any person may apply for an additional allotment base for any class of oil by filing an application with the Committee on or before December 1 of the marketing year preceding the marketing year for which the additional allotment bases will be made available.

(3) The Committee shall, with the approval of the Secretary, establish rules and regulations to be used for determining the distribution of additional allotment bases. In establishing such rules, the Committee shall take into account, among other things, the minimum economic enterprise requirements for oil production, the applicant's ability to produce oil, the area where the oil will be produced and other economic and marketing factors.

(e) The right to each producer receiving an allotment base, or any legal successor in interest, to retain all or part of an allotment base, shall be dependent on continuance to make a bona fide effort to produce the annual allotment referable thereto and failing to do so, such allotment base shall be reduced by an amount equivalent to such unproduced portions.

EDITORIAL NOTE: At 50 FR 41480, Oct. 11, 1985, paragraph (d)(2) of § 985.53 was indefinitely suspended.

§ 985.54 Issuance of annual allotments.

(a) Whenever the Secretary establishes a salable quantity and allotment percentage for a class of oil that may be freely marketed during a marketing year, the Committee shall issue an annual allotment to each producer holding an allotment base for that class of oil. Each producer's annual allotment for a class of oil shall be determined by multiplying the producer's allotment base for that class of oil by the applicable allotment percentage.

(b) On or before December 1, the Committee shall furnish each registered holder of an allotment base a form for the producer to apply for an annual allotment for the ensuing marketing year. The Committee, with the approval of the Secretary, shall establish rules and regulations prescribing the information to be submitted on this form. The Committee shall notify each producer of the producer's annual allotment for each class of oil within 10 days after the Secretary establishes the salable quantity and allotment percentage.

(c) Through 1981, a handler may acquire oil of a producer's own production to fulfill a written contract entered into by these two persons prior to February 27, 1979. The terms of this contract shall require the producer to deliver to that handler a specified quantity of a class of oil from that producer's production at a specific price from a specified acreage and produced prior to 1982. The quantity of oil acquired by the handler pursuant to that contract during the 1980-81 or 1981-82 marketing year may exceed the producer's annual allotment for the applicable marketing year, but shall be charged against the producer's annual allotment for that year.

§ 985.55 Identification.

(a) Each producer shall, under supervision of the Committee, identify each class of oil within 15 days following its production, or such other period of time as is recommended by the Committee with the approval of the Secretary. Identification of oil shall be accomplished before its delivery either to a handler for handling as salable oil, or to the Committee or its designees for storage as excess oil.

(b) Identification shall indicate whether the oil is salable or excess oil and include the name of the producer, the class of oil, the net weight, the container number and such other information as may be required by the Committee.

(c) Identification shall be accomplished in accordance with rules and regulations established by the Com-

mittee with the approval of the Secretary.

(d) No handler shall handle as salable oil, and the Committee shall not receive as excess oil, any oil that has not been identified as provided in this section, and no person shall alter or remove any identification except when incidental to final disposition.

§ 985.56 Excess oil.

Oil of any class in excess of a producer's applicable annual allotment shall be identified as excess oil and shall be disposed of as follows:

(a) Before October 15, or such date as the Committee, with the approval of the Secretary, may establish, a producer, following notification of the Committee, may transfer excess oil to another producer to enable that producer to fill a deficiency in that producer's annual allotment, or

(b) Before November 1, or such other date as the Committee, with the approval of the Secretary, may establish, excess oil, not used to fill another producer's deficiency, shall be delivered to the Committee or its designees for storage. Such oil shall be stored for the account of the producer. All costs of storage including identification and insurance shall be paid by the producer of excess oil. No handler shall handle excess oil and no producer shall deliver excess oil to other than the Committee or its designees.

(c) The Committee, with the approval of the Secretary, may establish such rules and regulations as it deems necessary for the transfer or storage of excess oil.

§ 985.57 Reserve pool requirements.

(a) On November 1, or such other date as the Committee, with the approval of the Secretary may establish, the Committee shall pool identified excess oil as reserve oil in such manner as to accurately account for its receipt, storage, and disposition. The Committee shall store reserve oil for the account of the producer and maintain the identity of the reserve oil by producer's name, the year produced, the class of oil, and such other identification as may be used in normal commercial trade practices. The Committee shall designate a Committee employee as reserve pool manager.

(b) *Disposition.* (1) When, in any marketing year, a producer has produced less than the annual allotment of a class of oil, the producer may, upon notification of the Committee, fill the deficiency with the same class of reserve oil from the producer's prior production.

(2) Prior to March 15 of any year, or such other date as recommended by the Committee and approved by the Secretary, a producer may notify the Committee of a possible deficiency in the producer's ensuing year's production of oil and wishes to use reserve oil from own production to fill the ensuing year's annual allotment. The Committee shall approve the producer's request if the oil is still available at the time of the request.

(3) Under supervision of the Committee, a producer may exchange salable oil for the same class and quantity of reserve oil from own production so long as the oil is properly identified.

(4) When the Committee finds that additional oil is needed to fill the normal market demand, it shall offer all or a portion of the reserve oil for sale to handlers. Offers to sell, extension of offers and withdrawal of offers shall be subject to disapproval by the Secretary. The Committee may establish rules and regulations governing the offers and sale to handlers.

(5) The Committee may use reserve oil for market development projects approved by the Secretary. Such projects may be conducted by the Committee or in conjunction with or through handlers.

(c) *Pool expenses and proceeds.* Expenses incurred by the Committee in handling and storing reserve oil shall be paid by the equity holders. The proceeds from the disposition of reserve oil shall be distributed, after deduction of any expenses incurred by the Committee in receiving, handling, storing, and disposing thereof, to the equity holders or their successors in interest, on the basis of the number of pounds, class of oil and quality credited to each equity holder's account in the pool. A full accounting to each equity holder, or successor in interest,

in each reserve pool shall be made by the Committee annually.

§ 985.58 Exempt oil.

Oil held by a producer or handler on the effective date of this subpart shall not be regulated under this subpart if reported and identified to the Committee not later than 60 days after that date. Any such oil not reported and identified to the Committee shall be subject to all regulation under this subpart.

§ 985.59 Transfers.

(a) Nothing contained in this part shall prevent a producer from transferring the location where that producer's annual allotment is produced to another location except that the producer shall report the transfer to the Committee within 30 days after the transfer.

(b) A producer may transfer all or part of an allotment base to another producer under rules and regulations established by the Committee, with the approval of the Secretary: *Provided,* That the allotment base obtained by transfer from another producer or issued pursuant to § 985.53(d)(1) shall not be transferred for at least 2 years following transfer or issuance, and that the person receiving the allotment base submit to the Committee, evidence of an ability to produce and sell oil from such allotment base in the first marketing year following the transfer or issuance of the allotment base.

Reports and Records

§ 985.60 Reports.

(a) *Inventory.* Each handler shall file with the Committee a certified report showing such information as the Committee may specify with respect to any oil which was held by the handler at such times as the Committee may designate.

(b) *Receipts.* Each handler shall, upon request of the Committee, file with the Committee a certified report showing for each lot of oil received, the identifying marks, class of oil, weight, place of production, and the producer's name and address at such times as the Committee may designate.

(c) *Other reports.* Upon the request of the Committee, each handler shall furnish such other information as may be necessary to enable the Committee to exercise its powers and perform its duties under this part.

§ 985.61 Records.

Each handler shall maintain such records pertaining to all oil handled as will substantiate the required reports. All such records shall be maintained for not less than 2 years after the termination of the marketing year to which such records relate.

§ 985.62 Verification of reports and records.

For the purpose of assuring compliance with record keeping requirements and verifying reports filed by producers and handlers, the Secretary and the Committee, through its duly authorized employees, shall have access to any premises where applicable records are maintained, where oil is received or held, and at any time during reasonable business hours, shall be permitted to inspect such handlers' premises, and any and all records of such handlers with respect to matters within the purview of this part.

§ 985.63 Confidential information.

All reports and records furnished or submitted by handlers to, or obtained by the employees of the Committee, which contain data or information constituting a trade secret or disclosing the trade position, financial condition, or business operations of the particular handler from whom received, shall be treated as confidential and the reports and all information obtained from records shall, at all times, be kept in the custody and under the control of one or more employees of the Committee who shall disclose such information to no person other than the Secretary.

MISCELLANEOUS PROVISIONS

§ 985.64 Compliance.

No person shall handle oil except in conformity with the provisions of this part.

§ 985.65 Rights of the Secretary.

Members of the Committee and subcommittees, and any agents, employees or representatives thereof, shall be subject to removal or suspension by the Secretary at any time. Each and every decision, determination, and other act of the Committee shall be subject to the continuing right of disapproval by the Secretary at any time. Upon such disapproval, the disapproved action of the Committee shall be deemed null and void, except as to acts done in reliance thereon or in accordance therewith prior to such disapproval by the Secretary.

§ 985.66 Derogation.

Nothing contained in this part is, or shall be construed to be, in derogation or in modification of the rights of the Secretary or of the United States (a) to exercise any powers granted by the act or otherwise, or (b) in accordance with such powers, to act in the premises whenever such action is deemed advisable.

§ 985.67 Agents.

The Secretary may, by designation in writing, name any officer or employee of the United States or name any agency or division in the U.S. Department of Agriculture, to act as the Secretary's agent or representative in connection with any of the provisions of this part.

§ 985.68 Personal liability.

No member or alternative member of the Committee and no employee or agent of the Committee shall be held personally responsible, either individually or jointly with others, in any way whatsoever, to any person for errors in judgment, mistakes, or other acts, either of commission or omission, as such member, alternate, employee, or agent, except for acts of dishonesty, willful misconduct, or gross negligence.

§ 985.69 Duration of immunities.

The benefits, privileges, and immunities conferred upon any person by virtue of this part shall cease upon its termination, except with respect to acts done under and during the existence of this part.

§ 985.70 Separability.

If any provision of this part is declared invalid or the applicability thereof to any person, circumstance or thing is held invalid, the validity of the remainder of this part or the applicability thereof to any other person, circumstance, or thing shall not be affected thereby.

§ 985.71 Effective time.

The provisions of this subpart, and of any amendment thereto, shall become effective at such time as the Secretary may declare and shall continue in force until terminated or suspended in one of the ways specified in § 985.72.

§ 985.72 Termination.

(a) *Failure to effectuate.* The Secretary shall terminate or suspend the operation of any or all of the provisions of this part upon a finding that such provisions obstruct or do not tend to effectuate the declared policy of the act.

(b) *Referendum.* The Secretary shall terminate the provisions of this subpart at the end of any marketing year upon a finding that such termination is favored by a majority of the producers who, during the preceding marketing year, produced for market more than 50 percent of the volume of oil so produced: *Provided,* That termination shall be effective only if announced before May 31 of the then current marketing year.

(c) *Termination of act.* The provisions of this subpart shall, in any event, terminate whenever the provisions of the act authorizing them cease to be in effect.

§ 985.73 Proceedings after termination.

Upon termination of the provisions of this part, the Committee shall, for the purpose of liquidating the affairs of the Committee, continue as trustees

of all the funds and property then in its possession or under its control, including claims for any funds unpaid or property not delivered at the time of such termination. The said trustees shall (a) continue in such capacity until discharged by the Secretary; (b) from time to time account for all receipts and disbursements and deliver all property on hand, together with all books and records of the Committee and of the trustees, to such persons as the Secretary may direct; and (c) upon the request of the Secretary execute such assignments or other instruments necessary or appropriate to vest in such person full title and right to all of the funds, property, and claims vested in the Committee or the trustees pursuant thereto. Any person to whom funds, property, or claims have been transferred or delivered, pursuant to this section, shall be subject to the same obligation imposed upon the Committee and upon trustees.

§ 985.74 Effect of termination or amendment.

Unless otherwise expressly provided by the Secretary, the termination of this subpart or of any regulation issued pursuant to this subpart, or the issuance of any amendment to either thereof, shall not (a) affect or waive any right, duty, obligation, or liability which shall have risen or which may thereafter arise in connection with any provision of this subpart or any regulation issued hereunder, or (b) release or extinguish any violation of this subpart or any regulation issued hereunder, or (c) affect or impair any rights or remedies of the Secretary or any other person with respect to any such violation.

Subpart—Administrative Rules and Regulations

§ 985.104 Changed classes of spearmint oil.

Pursuant to § 985.4, the classes of spearmint oil contained in that section are changed by deleting the term and definition "Class 2" Oil and changing the definition of "Class 1" Oil. The changed classes are as follows:

"Class 1"—Oil extracted from Scotch Spearmint.

"Class 3"—Oil extracted from Native Spearmint.

"Class 4"—Oil which has a spearmint flavor, extracted from plants other than Scotch or Native Spearmint.

[48 FR 53400, Nov. 28, 1983]

§ 985.152 Handling report.

Whenever an allotment percentage has been established for a class of oil, each handler shall furnish to the Committee at least the following information for each lot of that class of oil acquired by the handler from a producer: (a) Name of producer; (b) name of handler; (c) class of oil acquired; (d) date of acquisition; (e) date when oil was produced; (f) net weight of oil in the lot; (g) quantity of that class of oil in the producer's annual allotment available for handler before this acquisition; and (h) quantity of oil remaining in the producer's annual allotment after this acquisition. This information shall be furnished in such manner as the Committee may prescribe. Upon acquisition the handler or the handler's agent also shall include the applicable information on the back of the producer's Annual Allotment Certificate, showing that the acquired oil was within the unused portion of the producer's annual allotment.

[46 FR 43130, Aug. 27, 1981]

§ 985.153 Issuance of additional allotment base to new and existing producers.

(a) *Definitions.* (1) "New producer" means any person who never was issued an allotment base by the Committee for a class of oil in any capacity either as an individual, or as a member of a partnership, corporation, or any other business unit.

(2) "Existing producer" means any person who was issued an allotment based by the Committee for a class of oil in any capacity either as an individual, or as a member of a partnership, corporation, or any other business unit. Any person who was initially issued an allotment base for a class of oil and changed identity of operation,

as set forth in § 985.53(a), since April 14, 1980, and requests additional allotment base for that class of oil pursuant to this section, shall be deemed to be an existing producer.

(b) *Requests.* Any new or existing producer desiring additional allotment base for any class of oil made available by the Committee pursuant to § 985.53(d)(1) shall request such base by a date specified by the Committee prior to the marketing year for which such base will be made available.

(c) *Issuance*—(1) *New producer.* The Committee shall determine the size and number of economic enterprises of additional allotment base for each class of oil to be made available to new producers in each marketing year. The Committee shall include that information in its announcements to new producers informing them when to submit requests for additional allotment bases. The Committee shall determine whether the new producers requesting additional base have ability to produce spearmint oil. The names of all eligible new producers shall be placed in a lot for drawing, and the Committee shall immediately notify each new producer whose name was drawn and issue that producer an allotment base in the appropriate economic enterprise.

(2) *Existing producers.* Each existing producer of a class of spearmint oil who requests additional allotment base and has the ability to produce additional quantities of that class of spearmint oil shall be eligible to receive a share of the additional allotment base for that class of oil. Additional allotment base to be issued by the Committee for a class of oil shall be distributed equally among the eligible producers for that class. The Committee shall immediately notify each producer who is to receive additional allotment base by issuing that producer an allotment base in the appropriate amount.

(d) The person receiving any additional allotment base pursuant to this section shall submit to the Committee, evidence of an ability to produce and sell oil from such allotment base in the first marketing year following issuance of such base. Allotment base issued under this section shall not be transferred for at least two years following issuance.

[47 FR 41332, Sept. 20, 1982, as amended at 50 FR 41480, Oct. 11, 1985]

§ 985.154 Issuance of annual allotments.

(a) Each producer who is a registered holder of an allotment base, and desiring an annual allotment for the ensuing marketing year, shall apply to the Committee for that allotment. The registered holder shall furnish at least the following information: (1) The number of acres of each species (Scotch or Native) of spearmint planted, or intended to be planted for harvest in the ensuing marketing year; (2) whether the spearmint to be harvested in the ensuing marketing year is baby mint (first year harvest) or mature mint (second year or older harvest); and (3) any changes in location or production as reported for the preceding year.

(b) In order to enable the Committee to insure compliance and verify furnished information, each producer requesting an annual allotment shall permit the Committee or its representatives, whenever necessary, to measure the producer's spearmint acreage.

[46 FR 43130, Aug. 27, 1981]

§ 985.155 Identification of oil by producer.

Following the distillation of oil and prior to delivery either to a handler for handling as salable oil or to the Committee or its designee for storage as excess oil, each producer shall furnish the following information to the Committee: *Provided,* That any class of oil retained by a producer shall be reported to the Committee within 15 days following the completion of its distillation.

(a) Producer's name and address; (b) date the oil was put into the drum; (c) class of oil in the drum; (d) drum identification number; (e) approximate net weight of the oil; (f) handler's pickup receipt number, when applicable; (g) destination of oil for storage; (h) name of the firm where the oil was distilled; and (i) name of the person submitting the information.

[46 FR 43130, Aug. 27, 1981]

§ 985.156 Transfer of excess oil by producers.

Before November 1 a producer, following notification of the Committee, may transfer excess oil to another producer to enable that producer to fill a deficiency in that producer's annual allotment.

[45 FR 71760, Oct. 30, 1980]

NOTE: After January 1, 1979, "Budget of Expenses and Rate of Assessment" regulations (e.g. sections .300 through .399) and "Marketing percentage" regulations (e.g. sections .200 through .299) which are in effect for a year or less, will not be carried in the Code of Federal Regulations. For FEDERAL REGISTER citations affecting these regulations, see the "List of CFR Sections Affected" in this volume.

PART 987—DOMESTIC DATES PRODUCED OR PACKED IN RIVERSIDE COUNTY, CALIFORNIA

Subpart—Order Regulating Handling

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AUTHORITY: Secs. 1-19, 48 Stat. 31, as amended; 7 U.S.C. 601-674.

Subpart—Order Regulating Handling

SOURCE: 27 FR 6818, July 19, 1962, unless otherwise noted.

DEFINITIONS

§ 987.1 Secretary.

"Secretary" means the Secretary of Agriculture of the United States, or any officer or employee of the Department to whom authority has heretofore been delegated, or to whom authority may hereafter be delegated, to act in his stead.

§ 987.2 Act.

"Act" means Public Act No. 10, 73d Congress, as amended and as reenacted and amended by the Agricultural Marketing Agreement Act of 1937, as amended (secs. 1-19, 48 Stat. 31, as amended; 7 U.S.C. 601 et seq.).

§ 987.3 Person.

"Person" means an individual, partnership, corporation, association, or any other business unit.

§ 987.4 Area of production.

"Area of production" means Riverside County, Calif.

[36 FR 15037, Aug. 12, 1971]

§ 987.5 Dates.

"Dates" means the Deglet Noor, Zahidi, Halawy, and Khadrawy varieties of domestic dates produced or packed in the area of production.

§ 987.6 Crop year.

"Crop year" means the 12-month period beginning October 1 of each year and ending September 30 of the following year.

[43 FR 4250, Feb. 1, 1978]

§ 987.7 Producer.

"Producer" is synonymous with grower and means any person engaged in a proprietary capacity in the production of dates for sale.

§ 987.8 Handler.

"Handler" means any person handling dates which have not been inspected and certified for handling in the hands of a previous holder and any repacker: *Provided*, That for the purposes of §§ 987.21 and 987.24 a person shall qualify as a handler only

if he has acquired the dates directly from producers.

[32 FR 12595, Aug. 31, 1967, as amended at 43 FR 4250, Feb. 1, 1978]

§ 987.8a Repacker.

"Repacker" means any wholesaler or jobber who receives packed dates certified for handling pursuant to § 987.41(a), repackages them in containers other than those in which received, and handles such repackaged dates.

[32 FR 12595, Aug. 31, 1967]

§ 987.9 Handle.

"Handle" means to sell, consign, transport, or ship (except as a common or contract carrier of dates owned by another person) or in any way to put dates into the current of commerce including the shipment or delivery of utility dates or cull dates into nonhuman consumption outlets, except that sales or deliveries, by producers, of other than cull dates, to a handler within the area of production, or the movement of dates by a handler to storage for his account within the area of production, or counties adjoining the area of production, shall not be considered handling. The Committee, with the approval of the Secretary, may establish monitoring procedures for storage of dates in Orange, San Diego, and Yuma Counties.

[36 FR 15037, Aug. 12, 1971, as amended at 43 FR 4250, 4251, Feb. 1, 1978]

§ 987.10 Handler carry-over.

"Handler carry-over" means, as of any date, all marketable dates then held by a handler or for his account (whether or not sold), plus the estimated quantity of marketable dates in ungraded or unprocessed lots then held by said handler.

§ 987.11 Trade demand.

"Trade demand" means those quantities of marketable dates which the Committee finds are required to satisfy the need for dates in specific outlets in which marketable dates are handled.

[43 FR 4250, Feb. 1, 1978]

§ 987.12 Marketable dates.

"Marketable dates" means those dates which are certified as equal to or higher than the applicable minimum grade and size requirements in effect pursuant to § 987.39, and any additional applicable requirements in effect pursuant to § 987.40. Marketable dates shall include but not be limited to the following:

(a) *DAC dates.* DAC dates are marketable whole or pitted dates that are inspected and certified as meeting the grade, size, container, and identification requirements established by the Committee, with the approval of the Secretary, for a specific variety for handling in the United States and Canada.

(b) *Dates for further processing.* Dates for further processing (FP) are marketable whole dates acquired by one handler from another handler that are certified as meeting the same grade and size requirements for DAC dates, with the exception of moisture requirements, and such identification requirements applicable to FP dates that are established by the Committee, with the approval of the Secretary, for any specific variety.

(c) *Export dates.* Export dates are marketable whole or pitted dates that are inspected and certified as meeting the grade, size, container, and identification requirements established by the Committee, with the approval of the Secretary, for a specific variety, to be handled in export to any country or group of countries with the exeption of Canada. The Committee may establish different requirements for different countries.

(d) *Product dates.* Product dates are marketable dates that are inspected and certified as meeting the applicable grade and size requirements for dates to be handled in such forms as rings, chunks, pieces, butter, macerate, paste, or any other forms which the Committee deems appropriate and which will result in dates moving into consumption in a form other than that of whole or pitted dates.

[43 FR 4250, Feb. 1, 1978]

§ 987.13 Free dates.

"Free dates" means dates of any variety that are at the time of certification destined for consumption in whole or pitted form in the United States and Canada (and such other countries as the Committee determines are likely to acquire them at prices reasonably comparable with prices received domestically) and which are free to be handled pursuant to any free percentage established by the Secretary in accordance with § 987.44.

[43 FR 4251, Feb. 1, 1978]

§ 987.14 Restricted dates.

"Restricted dates" means those dates which must be withheld by handlers pursuant to any restricted percentage established by the Secretary in accordance with § 987.44.

§ 987.15 Substandard dates.

"Utility dates" means those dates which fail to meet the requirements for marketable dates but are not cull dates.

[27 FR 6818, July 19, 1962, as amended at 43 FR 4251, Feb. 1, 1978]

§ 987.16 Cull dates.

"Cull dates" means dates which fail to meet the requirements (with respect to freedom from defects) prescribed in title 3, group 4, article 24, section 24, section 1434 of the Food and Agricultural Code of California for dates for use in products or by-products other than alcohol, brandy, and products not intended for human consumption and any dates residual from field or packinghouse grading operations.

[27 FR 6818, July 19, 1962, as amended at 43 FR 4251, Feb. 1, 1978]

§ 987.17 Graded dates.

"Graded dates" means those dates which are eligible for certification as marketable dates.

§ 987.18 Committee.

"Committee" means the California Date Administrative Committee established pursuant to § 987.21.

[36 FR 15037, Aug. 12, 1971]

§ 987.20 Part and subpart.

"Part" means the order regulating the handling of domestic dates produced or packed in Riverside County, Calif., and all rules, regulations, and supplementary orders issued thereunder. The aforesaid order shall be a "subpart" of such part.

[36 FR 15037, Aug. 12, 1971]

California Date Administrative Committee

§ 987.21 Establishment and membership.

A California Date Administrative Committee consisting of nine members is hereby established to administer the terms and conditions of this part. For each member there shall be an alternate member, and the provisions of this part applicable to the number, nomination, qualification and selection of members shall apply in like manner to alternate members. Three of the members, referred to in this part as "producer members", shall be producers or officers or employees of producers, and shall not be handlers, or directors, officers, or employees exercising a supervisory or managerial function of a handler. The six remaining members, referred to in this part as "producer-handlers", shall be selected from (a) handlers, or directors, officers or employees of a handler, or (b) producers who are also handlers or directors, officers or employees exercising a supervisory or managerial function of a handler. The Committee, with the approval of the Secretary, may issue rules and regulations covering matters of eligibility for producer members, or revising the composition of the Committee prescribed in this section if it no longer is representative following a substantial change in the industry.

[43 FR 4251, Feb. 1, 1978]

§ 987.23 Term of office.

The term of office for members and alternate members shall be 2 years beginning August 1, except such term may be shorter if the Committee composition is changed in the interim pursuant to § 987.21. Each member and alternate member shall, unless other-

wise ordered by the Secretary, continue to serve until his successor has been selected and has qualified.

[43 FR 4251, Feb. 1, 1978]

§ 987.24 Nomination and selection.

(a) Nomination for members and alternate members of the Committee shall be made not later than June 15 of every other year.

(b) Opportunity shall be provided producers and handlers to nominate individuals to serve on the Committee by establishing a day for polling and also for casting absentee ballots. Persons will only be able to vote in nominations for the group in which they would be qualified to serve on the Committee, and shall nominate the applicable number of individuals for the positions prescribed pursuant to § 987.21. Each producer, regardless of the number and locations of his date gardens, voting in the nominations for producer members and producer alternate members, shall be entitled to one vote for each member and alternate member position to be filled. The individual receiving the highest number of votes for a position shall be the nominee. Each person voting in the nominations for producer-handler members and producer-handler alternate members, shall be given the opportunity to vote for one member and one alternate member position. His ballot shall be weighted by the pounds of dates he had certified as marketable dates, from the beginning of the then current crop year through April which he produced in his own gardens or acquired from other producers. The individual receiving the highest weighted vote for a producer-handler position shall be the nominee. The Committee, with the approval of the Secretary, may issue rules and regulations on the manner in which nominees for a position may be obtained, polling, balloting, absentee ballots, and the weighting of votes for producer-handler positions when the Committee is restructured during a term of office.

[43 FR 4251, Feb. 1, 1978]

§ 987.25 Qualification.

Each person selected as a member or alternate member of the Committee shall, prior to serving on the Committee, qualify by filing with the Secretary a written acceptance after receiving notice of his selection. Any member or alternate who, at the time of his selection, was a member of or employed by a member of the group which nominated him shall, upon ceasing to be such member or employee, become disqualified to serve further and his position on the Committee shall be deemed vacant.

§ 987.26 Vacancies.

In the event of any vacancy occasioned by the failure to qualify, declination to serve, removal, resignation, disqualification, or death of any person nominated to serve on the Committee, or any member or alternate member selected by the Secretary, the Committee shall promptly submit its recommendation to the Secretary of a nominee eligible to serve in accordance with the requirements specified for the group in § 987.21. If the vacancy is for a member position, the Committee shall recommend appointment of the alternate member if that person is willing to serve in that position. If the Committee's recommendation is not submitted within 30 calendar days after such vacancy occurs, the Secretary may fill such vacancy without regard to nominations, and the selection shall be made on the basis of representation provided in § 987.21.

[43 FR 4251, Feb. 1, 1978]

§ 987.27 Alternates.

An alternate for a member of the Committee shall act in the place and stead of such member during his absence or in the event of his removal, resignation, disqualification, or death, until a successor for such member's unexpired term has been selected and has qualified. In the event a member and his alternate are unable to attend a meeting of the Committee, such member or alternate, in that order, may designate an alternate from the group he represents to act in his place. If neither a member nor his alternate has designated an alternate as his replacement, or such designated alter-

nate is unable to serve as the replacement, the chairman may, with the concurrence of a majority of the members including alternates acting as members, representing such group, designate an alternate from such group who is present at the meeting and is not acting as a member to act in the place and stead of the absent member.

[27 FR 6818, July 19, 1962, as amended at 36 FR 15038, Aug. 12, 1971; 43 FR 4251, Feb. 1, 1978]

§ 987.28 Expenses.

The members of the Committee shall serve without compensation but shall be allowed their necessary expenses.

§ 987.29 Powers.

The Committee shall have the following powers:

(a) To administer the terms and provisions of this subpart.

(b) To make rules and regulations to effectuate the terms and provisions of this subpart.

(c) To receive, investigate, and report to the Secretary complaints of violations of this subpart, and

(d) To recommend to the Secretary amendments to this subpart.

§ 987.30 Duties.

The Committee shall have, among other things, the following duties:

(a) To act as intermediary between the Secretary and any producer or handler.

(b) To keep minutes, books, and records which will clearly reflect all of its transactions and such minutes, books, and other records shall be subject to examination by the Secretary at any time.

(c) To investigate the growing, handling, and marketing conditions with respect to dates, to assemble data in connection therewith.

(d) To furnish to the Secretary such available information as may be deemed pertinent to the administration of this subpart or as he may request and to give to the Secretary the same notice of meetings of the Committee as is given to the members of the Committee.

(e) To appoint such employees as it may deem necessary and to determine the salaries, define the duties and where desirable fix the bonds of such employees.

(f) To cause the books of the Committee to be audited by a certified public accountant at least once each crop year and at such other times as the Committee may deem necessary or the Secretary may request. The report of each such audit shall show among other things the receipt and expenditure of funds pursuant hereto. Two copies of such audit shall be submitted to the Secretary.

(g) To investigate compliance and to use means available to the Committee to prevent violations of this part.

(h) To furnish the Committee viewpoints of the consumer, the Committee may utilize a consumer consultant. The consumer consultant shall have no financial interest in the date industry and shall receive no compensation, however, such person shall be reimbursed for necessary expenses attendant to those assignments that the Committee has given prior support and approval.

[27 FR 6818, July 19, 1962, as amended at 43 FR 4252, Feb. 1, 1978]

§ 987.31 Procedure.

(a) A majority of the Committee shall constitute a quorum.

(b) The Committee shall, from among its members, select a chairman and such other officers and adopt such rules for the conduct of its business as it may deem advisable.

(c) For any decision of the Committee to be valid, a concurring vote of at least five members is required, except as follows:

(1) In matters relating to restructuring Committee composition pursuant to § 987.21, concurrence by at least eight members is required;

(2) In matters relating to establishment, modification and application of free and restricted percentages pursuant to §§ 987.44 and 987.46, concurrence by at least seven members is required; and

(3) In matters relating to recommendation of any program of paid advertising or major program of market

promotion pursuant to § 987.33, concurrence by at least six members is required.

(d) At all assembled meetings each vote shall be cast in person.

(e) The Committee may vote upon any proposition by mail, or telephone when confirmed in writing within 2 weeks, or telegram, upon due notice and full and identical explanation to all members, including alternates acting as members, but any such action shall not be considered valid unless unanimously approved.

(f) If the total number of members of the Committee is changed pursuant to § 987.21, the minimum voting requirements shall be in the same ratio to the revised total number of members, as nearly as practicable, as the minimum voting requirements prescribed in paragraph (c) of this section are to nine.

[36 FR 15038, Aug. 12, 1971, as amended at 43 FR 4252, Feb. 1, 1978]

Market Development

§ 987.33 Research and promotion.

(a) The Committee, with the approval of the Secretary, may establish or provide for the establishment of marketing research and development projects, including marketing promotion and paid advertising, designed to assist, improve, or promote the marketing, distribution, and consumption of dates. The expenses of such projects shall be paid from funds collected pursuant to § 987.72. Upon conclusion of each program, but at least annually, the Committee shall summarize and report on the program status and accomplishments, to its members and the Secretary. A similar report to the Committee shall be required of any contracting party on any paid advertising or major program. Also, for each advertising or major program the contracting party shall be required to maintain records of money received and expenditures and such shall be available to the Committee and the Secretary. The Committee shall, with the approval of the Secretary, establish criteria which will determine such major program.

[32 FR 12595, Aug. 31, 1967, as amended at 36 FR 15038, Aug. 12, 1971; 43 FR 4252, Feb. 1, 1978]

Marketing Policy

§ 987.34 Development.

As early as practicable, but no later than October 31, the Committee shall prepare and submit to the Secretary, a report setting forth its marketing policy, including data on which it is based, by variety, for regulation of dates in the crop year.

(a) The committee shall consider such factors as: (1) The estimated production of dates during the crop year; (2) the estimated production of DAC dates, export dates, and product dates; (3) the handler carryin on October 1 of dates of those qualities; (4) the estimated trade demand in each outlet during the crop year; and (5) the desirable carryout, by outlet.

(b) If dates to be handled as free dates are not synonymous with those to be handled in DAC outlets, the Committee shall consider such additional factors as: (1) The supply of marketable dates that will be available from the estimated production, and from the October 1 carryin, that could be used as free dates, and (2) the estimated trade demand for free dates during the current crop year, and the desirable carryout for free dates.

(c) The Committee shall submit its recommendation as to grade, size, and container regulations and its recommendation whether free and restricted percentages should be established and if so, the free and restricted percentages and the appropriate withholding factor.

[43 FR 4252, Feb. 1, 1978]

§ 987.35 Modifications.

In the event the Committee subsequently determines that the marketing policy should be modified due to changing supply or demand conditions, it shall formulate and submit to the Secretary its modified marketing policy along with the data which it considered in connection with such modification.

§ 987.36 Notice.

The Committee shall give notice through newspapers having general circulation in the area of production or by other means of communication to producers and handlers of the contents of each marketing policy report submitted to the Secretary and of each report modifying such marketing policy. Copies of all such reports shall be maintained in the office of the Committee where they shall be available for examination by producers and handlers.

§ 987.38 Handlers of record.

Each crop year but no later than October 10 for continuing handlers and prior to handling dates in the case of new handlers, any person desiring to handle dates shall submit a report to the Committee on a form prescribed by it containing the following information with respect to all dates which such person expects to handle:

(a) The name and address of each producer;

(b) The location of each date garden; and

(c) The acreage and estimated current season's production thereon.

Those reports required to be filed by October 10 shall reflect producers who are signed up with the handlers as of October 1 of the then current crop year. The Committee, with the approval of the Secretary, may issue rules and regulations to carry out the provisions of this section.

[43 FR 4252, Feb. 1, 1978]

GRADE REGULATION

§ 987.39 The establishment of minimum standards.

In order to effectuate the declared policy of the act, all dates handled as marketable dates shall meet the requirements of U.S. Grade C, or if for further processing, U.S. Grade C (Dry) of the effective U.S. Standards for Grades of Dates, 7 CFR 52.1001: *Provided,* That the Secretary, may upon recommendation of the Committee, prescribe other minimum standards of grades and sizes for marketable dates of any variety to be handled in any designated outlet. To aid the Secretary in prescribing such other minimum standards, the Committee shall furnish to the Secretary the data upon which it acted in recommending such standards. The provisions hereof relating to minimum standards of grades and sizes for marketable dates and inspection requirements, within the meaning of section 2(3) of the act, and any other provisions relating to the administration and enforcement thereof shall continue in effect irrespective of whether the season average price to producers for dates is or is not in excess of the parity level specified in section 2(1) of the act. Notice of the minimum standard regulation shall be sent by the Committee to all handlers of record. On and after the effective date of such regulations no handler shall handle dates except in accordance with such minimum standard.

[32 FR 12596, Aug. 31, 1967, as amended at 43 FR 4252, Feb. 1, 1978]

§ 987.40 Additional grade or size regulations.

Whenever the Committee deems it advisable to establish grade or size requirements for any variety of dates, in addition to the minimum standard provided pursuant to § 987.39, to govern dates of such variety to be handled in any designated outlet or to be withheld to meet withholding obligation, or both, it shall recommend to the Secretary requirements as to grade based on the effective United States Standards for Grades of Dates or any modification thereof, and such size requirements as it may deem appropriate. If the Secretary finds, upon the basis of such recommendation or other information available to him, that such additional grade or size regulation, or both such regulations, will tend to effectuate the declared policy of the act, he shall establish such regulations. Notice thereof, showing the effective date, shall be sent by the Committee to all handlers of record. On and after the effective date no handler shall handle dates of such variety in any designated outlet or withhold such dates to meet withholding obligation except in accordance with such regulations.

[27 FR 6818, July 19, 1962, as amended at 43 FR 4252, Feb. 1, 1978]

§ 987.41 Inspection.

(a) *Packed dates.* Prior to handling any dates packed for handling each handler shall, at his own expense, cause: (1) An inspection to be made of such dates in order to ascertain if such dates meet the applicable grade and size regulations prescribed or provided for in this part; and (2) a certification for handling to be made of all such dates as meet such grade and size regulations.

(b) *Dates for further processing.* Prior to handling any dates for further processing each handler shall, at his own expense, cause: (1) An inspection to be made to ascertain if such dates meet the applicable grade and size requirements effective pursuant to § 987.39 or § 987.40, except for character associated with moisture; and (2) a certification for further processing to be made of all such dates as meet such grade and size requirements: *Provided,* That such inspection and certification requirements shall not apply to inter-handler transfers within the area of production of field-run dates or graded dates.

(c) *Identification and service.* All dates handled shall be identified by seals, stamps, or other means prescribed by the Committee and affixed to the containers by the handlers under the supervision of the Committee or the designated inspectors. Inspection shall be performed by inspectors of the United States Department of Agriculture's Processed Products Standardization and Inspection Branch or such other inspection service as may be recommended by the committee and approved by the Secretary. Handlers shall cause a copy of each inspection certificate to be furnished to the Committee.

VOLUME REGULATION

§ 987.43 Outlets and specifications for marketable dates.

Marketable dates shall not be handled or otherwise disposed of except as provided in this subpart. This shall not preclude dates of better grades or sizes being handled or otherwise disposed of in any outlet established for dates of lesser grades or sizes. The Committee, with the approval of the Secretary, may modify the designations specified in § 987.12 to reflect new major outlets and regulatory requirements needed because of changes in marketing conditions. Marketable dates shall include but not be limited to the following: DAC dates, Dates for further processing, Export dates, and Product dates.

[43 FR 4252, Feb. 1, 1978]

§ 987.44 Free and restricted percentages.

(a) Whenever the Committee finds that the available supply of marketable dates of applicable grade and size available to supply the trade demand for free dates of any variety is likely to be excessive, and that limiting the volume of marketable dates to be handled as free dates through establishment of free and restricted percentages applicable to such variety of such dates would tend to effectuate the declared policy of the act, it shall recommend such percentages to the Secretary. If the Secretary finds, upon the basis of the Committee's recommendation and supporting data or other information available to him, that the establishment of such percentages would tend to effectuate the declared policy of the act, he shall establish such percentages. The sum of the free and restricted percentages for any crop year shall equal 100 percent.

(b) The dates handled by any handler in accordance with the provisions hereof shall be determined to be that handler's quota fixed by the Secretary within the meaning of section 8a(5) of the act.

[27 FR 6818, July 19, 1962, as amended at 43 FR 4252, Feb. 1, 1978]

§ 987.45 Withholding restricted dates.

(a) Whenever free and restricted percentages for any variety of dates have been established for a crop year by the Secretary in accordance with § 987.44, each handler shall, at the time of having dates of such variety certified for handling as free dates (including those for further processing that are to be handled as free dates), withhold from handling a quantity of

marketable dates of such variety having a weight equal to the restricted percentage for such variety referrable to the dates so far certified. The withholding requirement shall not apply to dates certified for delivery directly to an excess supply removal program of the Secretary. The weight required to be withheld shall be determined by dividing the restricted percentage by the free percentage and applying the resultant withholding factor, rounded to the nearest one-tenth of one percent, to the weight of dates so certified. The withholding factor, computed as aforesaid, shall be established by the Secretary. When pitted dates are certified, the weight to be withheld shall be determined by dividing the weight of the pitted dates certified for handling or further processing by a divisor established by the Committee with the approval of the Secretary and applying the withholding factor.

(b) Compliance by any handler with the withholding of restricted dates may be deferred to any date not later than January 31 of any crop year, upon request to the Committee and when accompanied by a written undertaking that on or prior to such date, he will have fully satisfied his withholding obligation. Such undertaking shall be secured by a bond or bonds to be filed with, and acceptable to, the Committee and with a surety or sureties acceptable to the Committee, running in favor of the Committee and the Secretary in an amount conditioned upon full compliance with such undertaking. The amount shall be determined by multiplying the poundage of the deferred restricted obligation by a bonding rate per pound which would provide funds estimated to be sufficient for the Committee to purchase on the open market a volume of dates equivalent to the deferred obligation. Such bonding rate shall be established annually, and modified as necessary, by the Committee. Any sums collected through default by a handler on his bond shall be used by the Committee to purchase dates to meet the violated restricted obligation, reimburse the Committee for expenses relative to the default, and any excess money remaining shall be refunded to the defaulting handler. The dates so purchased by the Committee shall be turned over to the defaulting handler for disposition as restricted dates. In the event the Committee is unable to purchase a poundage of dates equal to the defaulted volume, the sums collected shall, after reimbursement of Committee expenses in connection with the default, be distributed among all handlers other than the defaulting handler in proportion to the volume of certified dates handled as free dates (including those for further processing that were handled as free dates), during the crop year in which the default occurred.

(c) At any time during the crop year free dates may be inspected and certified for handling or for further processing as provided in § 987.41. Dates so certified shall, at the time of certification, be identified by appropriate seals, stamps, or tags to be furnished by the Committee and to be affixed to the containers by the handler under the direction and supervision of the Committee or its designated inspectors. The assessment requirements in § 987.72 as well as the withholding obligation prescribed in paragraph (a) of this section shall be met at the time of certification. However, a handler who has had more free dates certified for handling or further processing than he subsequently shipped or otherwise handled may, upon request to the Committee and with its approval, have any of such excess quantity of the certified dates suspended from certification of record or, if damaged or the outlet changed, removed from certification, and his withholding and assessment obligations adjusted accordingly. A handler, who has had dates certified for handling or further processing and has not had them so suspended from certification of record or removed from certification, may carry such certified free dates over into the new crop year and need not pay the assessment nor meet the requirements of any withholding percentages established for such year.

(d) Dates withheld to meet the withholding obligation shall be stored at the expense of the handler, in storage of his own choosing and disposed of in accordance with § 987.55. All such dates shall be inspected and identified

by appropriate seals, stamps, or tags to be furnished by the Committee and to be affixed to the containers by the handler under the direction and supervision of the Committee or its designated inspectors. All withholding and movement of restricted dates, shall be subject to the supervision and accounting control of the Committee and reports shall be filed as required by this part. Any handler who during a crop year disposes in restricted outlets of a quantity of marketable dates in excess of his withholding obligation of such year may: (1) On written request delivered to the Committee not later than September 30 of such crop year have a part or all of such excess transferred, by the Committee, to such other handler or handlers as he may name, for crediting such other handlers' withholding obligations incurred in that crop year; and in addition (2) have a part or all of the remainder of such excess credited to his restricted obligation of the subsequent crop year: *Provided,* That the amount of any such credit shall not exceed that established by the Committee, with the approval of the Secretary, as the percentage of such withholding obligation.

(e) On request to the Committee and with its approval, a handler may, in accordance with the provisions of this paragraph and any applicable rules and regulations which the Committee may prescribe with the approval of the Secretary, defer until any date not later than September 30 of the crop year the meeting of any portion of his obligation to withhold restricted dates by setting aside such amount of graded dates as will assure a quantity of marketable dates equal at least to the quantity needed to be withheld to meet his withholding obligation. With respect to any such dates the handler may set aside in connection with such a deferment, the Committee may require, if it deems it necessary, the handler to have made, at his own expense, such inspection as may be necessary for a determination as to whether such dates conform to the applicable requirements for dates that may be set aside under this paragraph. As a condition to the Committee approving the deferment, the handler shall agree in writing that: (1) He will adequately mark and identify the set-aside graded dates as such and hold them separate and apart from other dates; (2) the graded dates will not be removed from the stacks in which so set aside without the prior written permission of the Committee; (3) inspection of the dates by the Committee will be permitted at any reasonable time; and (4) if the quantity, quality, or size of the set-aside dates is found by the Committee at any time to be deficient, the handler will promptly set aside such additional or substitute quantity of graded dates as is necessary to correct the deficiency.

(f) Upon the Committee prescribing, with the approval of the Secretary, minimum standards for inspection of field-run dates and appropriate administrative rules and regulations, a handler may, in accordance therewith and the provisions of this paragraph, satisfy all or any part of his obligation to withhold restricted dates by setting aside field-run dates or by disposing of field-run dates in outlets prescribed in, or pursuant to, § 987.56. The field-run dates shall be of such quality or size as shall be prescribed in such rules and regulations. The setting aside, direct disposal, and disposal of any field-run dates set aside shall occur prior to September 30 of the crop year in which the withholding obligation occurs. Prior to the disposal or setting aside of the field run dates, the handler shall have had them inspected to determine the weight of dates eligible to satisfy withholding obligation. Upon such disposal or setting aside of the field-run dates, the handler shall be credited with satisfaction of his restricted obligation to the extent of the eligible weight of dates. In permitting the handler to so satisfy his withholding obligation the Committee shall require the handler to agree in writing that: (1) Any field-run dates set aside will be held separate and apart from other dates and appropriately marked; (2) such dates will not be removed from the stacks in which so set aside for substitution of other dates, disposition, or for any other reason without prior written permission of the Committee; and (3) inspection of said dates by the Committee will be permitted at

any reasonable time. In order to satisfy a withholding obligation by direct disposal of field-run dates into cull outlets, the disposal shall be under the supervision of the Committee and through persons on a Committee approved list of feeders and manufacturers. The handler may, upon giving prior notice to the Committee of any of the following proposed actions with respect to field-run dates withheld and obtaining its approval, (i) dispose of any such set-aside, field-run dates in the same manner as provided for direct disposal (ii) grade such dates and have the graded dates certified as marketable dates and withhold or dispose of such marketable dates as restricted dates, or (iii) substitute for the set-aside, field-run dates an equivalent quantity of marketable dates which he shall withhold or dispose of as restricted dates.

[27 FR 6818, July 19, 1962, as amended at 29 FR 9707, July 18, 1964; 36 FR 15039, Aug. 12, 1971; 43 FR 4253, Feb. 1, 1978]

§ 987.46 Revisions of percentages.

The Secretary may, on recommendation of the Committee submitted prior to January 31 of the crop year, or on the basis of other information available to him, increase the free percentage to conform with such new relation as may be found to exist between trade demand for free dates and available supply of marketable dates of applicable grade and size. Upon any revision in the free and restricted percentages the control obligation of each handler with respect to free dates handled or certified for handling or for further processing by him for the entire crop year shall be recomputed in accordance with such revised control percentages. The handler shall be permitted to select, insofar as practicable, under the supervision and direction of the Committee, the particular dates to be removed from any dates withheld.

[27 FR 6818, July 19, 1962, as amended at 43 FR 4253, Feb. 1, 1978]

§ 987.47 Surplus.

All cull dates and all substandard dates, including such dates blended with varieties within the generic term "dates" not regulated by this part, except any utility dates released to human consumption outlets pursuant to § 987.56, are surplus dates of any crop year. No handler shall ship or deliver such surplus dates to other than the Committee or its designee(s) for disposition in eligible outlets for such dates, except that any producer or handler may dispose of any such surplus dates of his own production within his own livestock feeding operations. Surplus dates delivered to the Committee shall be disposed of by it, in those outlets specified in § 987.56, at the best prices attainable and the proceeds returned pro rata, after deduction of Committee costs, to equity holders. The Committee may assist handlers with the cleaning, storage, or delivery of surplus dates and may, with the approval of the Secretary, establish rules and regulations necessary and incidental to administration of this regulation.

[27 FR 6818, July 19, 1962, as amended at 43 FR 4251, Feb. 1, 1978]

Container Regulation

§ 987.48 Container regulation.

Whenever the Committee deems it advisable to establish a container regulation for any variety of dates, it shall recommend to the Secretary the size, capacity, weight, or pack of the container, or containers, which may be used in the handling or packaging of dates, or both. If the Secretary finds upon the basis of such recommendation or other information available to him that such container regulation would tend to effectuate the declared policy of the act he shall establish such regulation and notice thereof showing the effective date shall be sent by the Committee to all handlers of record. After the effective date of such regulation, no handler shall handle dates of such variety except in accordance with such regulation and all other applicable requirements in effect pursuant to this part.

QUALIFICATIONS TO REGULATION

§ 987.50 Application after end of crop year.

Unless otherwise specified the regulations and the bonding rates established for any crop year shall continue in effect with respect to all free dates for which control obligations have not been previously met, until regulations and bonding rates are established for the new crop year. Thereupon the withholding obligations for all free dates handled or certified for handling or for further processing during such crop year shall be adjusted to the newly established percentages and a similar adjustment shall be made in any bond or bonds already given for that crop year.

[27 FR 6818, July 19, 1962, as amended at 43 FR 4253, Feb. 1, 1978]

§ 987.51 Interhandler transfers.

Transfers of dates may be made from one handler to another, and each handler who so transfers any such dates shall immediately upon the completion of the particular transfer notify the Committee of the transfer, specifying the date of the transfer, the quantity and variety of dates involved, and the name of the receiving handler. If such transfer is wholly within the area of production, the assessment and withholding obligations shall be placed on the handler agreeing to assume them: *Provided,* That in the absence of the Committee receiving notice of a specific agreement on such obligations, the buying handler shall be held accountable. If such transfer is from within the area of production to any point outside thereof, the assessment and withholding obligations shall be met by the handler within the area of production. Except for packed dates inspected and certified for handling prior to transfer and which are not repacked, any receiving handler (other than a repacker not otherwise a handler, who shall comply with § 987.53) shall comply with the requirements of § 987.41 on all dates, but this shall apply to repacked dates previously inspected and certified for handling only if the handler also packs dates received as field-run dates.

[32 FR 12596, Aug. 31, 1967]

§ 987.52 Exemption.

The Committee may exempt from regulation, upon written request of any producer or handler, the dates he sells to consumers through roadside stands, local date shops, mail order or specialty outlets, if it determines that the particular request is not likely to materially interfere with the objectives of this part. All dates handled pursuant to exemptions under this section shall be reported to the Committee in such manner and in such form as the Committee may prescribe. The Committee shall issue, with the approval of the Secretary, appropriate rules and regulations establishing the bases on which exemptions may be granted.

§ 987.53 Application of regulations to repackers.

Repackers shall be exempt from those requirements of this part, including reporting requirements, with respect to packed dates which had been certified for handling, pursuant to § 987.41(a), prior to receipt, except that: (a) A repacker who processes such dates by machine pitting shall comply with the grade, size, inspection, certification, and identification requirements, and (b) a repacker who repackages such dates in containers other than those in which received, shall comply with the then effective container regulations established pursuant to § 987.48.

[32 FR 12596, Aug. 31, 1967]

DISPOSITION OF OTHER THAN FREE DATES

§ 987.55 Outlets for restricted dates.

Restricted dates may be disposed of only through exportation to such countries as the Committee may approve or by diversion in product outlets described in § 987.43 which the Committee concludes to be appropriate and which will result in dates moving into consumption in a form other than that of whole or pitted dates. To facilitate sales and promote orderly marketing of any variety of restricted dates handled in export, the

Committee may participate in or negotiate for handlers, the sale of such dates to meet all or a substantial part of the needs of the particular country, and, in connection with each such sale, the Committee shall extend to all handlers an opportunity to participate therein and shall distribute the returns therefrom to participating handlers according to their respective contributions of dates. The Committee, with the approval of the Secretary, may prescribe rules and regulations governing the opportunity to participate in such sales. The provisions of this section shall not preclude restricted dates being disposed of in outlets for utility and cull dates prescribed in § 987.56.

[43 FR 4253, Feb. 1, 1978]

§ 987.56 Outlets for substandard and cull dates.

Subject to the provisions of § 987.47, substandard dates and cull dates may be disposed of without inspection, but only in feed, non-table syrup, alcohol, or brandy outlets, or in such other outlets for non-human food products as the Committee with the approval of the Secretary, may specify: *Provided,* That whenever the Committee concludes and the Secretary finds that the use of substandard dates of any variety in certain products for human consumption would tend to effectuate the declared policy of the act, the Secretary shall specify such products, and dates of such variety that are inspected and certified as utility dates may be disposed of for use, or used, in such products: *And provided further,* That whenever the Committee concludes and the Secretary finds that the disposition of substandard dates of any variety through any export outlet would tend to effectuate the declared policy of the act, the Secretary shall specify such export outlet, and dates of such variety that are inspected and certified as meeting such grade, size, container, and identification requirements as may be prescribed by the Committee with the approval of the Secretary for such outlet may be so exported.

[29 FR 9707, July 18, 1964, as amended at 43 FR 4251, 4253, Feb. 1, 1978]

§ 987.57 Approved manufacturers or feeders.

(a) Diversion of dates, pursuant to § 987.55 or § 987.56, shall be accomplished only by such persons (which may include handlers) as are approved manufacturers or feeders. Any person may become an approved manufacturer or feeder if he (1) submits an application to the Committee in which he agrees, as a condition to approval of his application, to furnish to the Committee such information as it may require and to comply with the requirements and restrictions relative to the use and disposition of such dates, as set forth in this part, and (2) receives from the Committee written approval of his application. The application and approval shall be in accordance with such rules, regulations and safeguards as may be prescribed pursuant to § 987.59.

[27 FR 6818, July 9, 1962, as amended at 43 FR 4251, 4253, Feb. 1, 1978]

§ 987.58 Terminal date.

Dates covered by §§ 987.55 and 987.56 shall, by September 30 of the subsequent crop year (a) in accordance with the applicable requirements of such sections, be disposed of, or be converted from their whole or pitted form; or (b) be set aside and marked for disposition pursuant to the applicable requirements of such sections. The Committee may prescribe, with the approval of the Secretary, such rules, regulations and safeguards, pursuant to § 987.59, as may be necessary to prevent dates covered by §§ 987.55 and 987.56 from interfering with the objectives of this part.

§ 987.59 Safeguards.

The Committee may prescribe, with the approval of the Secretary, such rules, regulations and safeguards as are necessary to prevent dates covered by §§ 987.55 and 987.56 from interfering with the objectives of this part.

Reports and Records

§ 987.61 Reports of handler carryover.

Each handler shall file each year with the Committee written reports of his carryover of dates as of March 1,

October 1, and at such other times as the Committee may prescribe: *Provided*, That during those seasons when volume regulations are established by the Secretary, the handler shall file an additional report on his January 1 carryover. Such reports shall be filed within 10 days of the date of the carryover. These reporting dates specified may be changed, upon recommendation of the Committee, together with substantiation of the need therefore, with the approval of the Secretary.

[43 FR 4253, Feb. 1, 1978]

§ 987.62 Reports of dates shipped.

Each handler who ships dates during a crop year shall submit to the Committee, in such form and at such intervals as the Committee may prescribe, reports showing the net weight of dates shipped by him and such other information pertinent thereto as the Committee may specify.

§ 987.63 Reports on restricted dates withheld.

Each handler from time to time, on demand of the Committee, shall file with it a report of the restricted dates withheld by him in satisfaction of his withholding obligation. Such reports shall show such information as the Committee may require and may be in such form as the Committee may prescribe.

§ 987.64 Reports on disposition of restricted, other marketable, utility, and cull dates.

Each handler disposing of any dates pursuant to §§ 987.55 and 987.56 shall promptly thereafter report such disposition to the Committee in such form as the Committee may prescribe.

[43 FR 4253, Feb. 1, 1978]

§ 987.65 Other reports.

Upon request of the Committee each handler shall furnish to it in such manner and at such times as it prescribes, such other information as will enable the Committee to perform its duties and exercise its powers hereunder.

§ 987.66 Certification of reports.

All reports submitted to the Committee as required in this part shall be certified to the United States Department of Agriculture and to the Committee as to the completeness and correctness of the information therein.

§ 987.67 Confidential information.

All data or other information constituting a trade secret or disclosing a trade position or business condition shall be received by, and kept in the custody of, one or more designated employees of the Committee and information which would reveal the circumstances of a single handler shall be disclosed to no person other than the Secretary.

§ 987.68 Verification of reports and records.

For the purpose of checking compliance with record keeping requirements and verifying reports filed by handlers, the Secretary and the Committee, through its duly authorized employees, shall have access to any premises where dates are held and, at any time during reasonable business hours, shall be permitted to examine any dates held and any and all records with respect to matters within the purview of this part. Handlers shall furnish labor necessary to facilitate such examinations at no expense to the Committee. All handlers shall maintain complete records establish and which accurately show the quantity of dates handled, disposed of, and withheld. The Committee, with the approval of the Secretary, may establish the type of records to be maintained. Such records shall be retained by handlers for not less than two years subsequent to the termination of each crop year.

[27 FR 6818, July 19, 1962, as amended at 36 FR 15039, Aug. 12, 1971; 43 FR 4253, Feb. 1, 1978]

Expenses and Assessments

§ 987.71 Expenses.

The Committee is authorized to incur such expenses, including maintenance of an operating reserve fund, as the Secretary may find are reasonable

and are likely to be incurred by it during each crop year for the maintenance and functioning of the Committee and for such other purposes as he determines to be appropriate. The recommendation of the Committee as to total expenses and allocation thereof for each crop year, together with all data supporting such recommendation, shall be submitted to the Secretary within a reasonable time after the marketing policy for each crop year is recommended.

§ 987.72 Assessments.

(a) *Requirement for payment.* Each handler shall pay to the Committee upon demand, on all dates he has certified as meeting the requirements for marketable dates and utility dates utilized in product outlets including the eligible portion of any field-run dates certified and set aside or disposed of pursuant to § 987.45(f), his pro rata share of all expenses which the Secretary finds are reasonable and likely to be incurred by the Committee during each crop year. Should the condition arise wherein the utility portion of dates handled in certain other outlets should not be, in the opinion of the Committee, subject to the payment of assessments on that portion, the Committee may recommend and the Secretary approve by rulemaking, such exclusion. Each handler's pro rata share shall be the rate of assessment per hundredweight fixed by the Secretary. At any time during or after a crop year the Secretary may increase such assessment rate to secure sufficient funds to cover unanticipated expenses or a deficit in assessable poundage. Any such increase shall apply to all assessable poundage of the crop year. The Committee may accept payments of assessments in advance and may borrow money in any amount not to exceed 10 percent of the estimated expenses set forth in its budget for the then crop year. The assessment weight of pitted dates shall be determined by dividing the weight of such dates by a divisor established by the Committee with the approval of the Secretary.

(b) *Surplus expenses.* The Committee is authorized to use temporarily funds derived from assessments collected pursuant to paragraph (a) of this section to defray expenses incurred in disposing of surplus dates. All such expenses shall be deducted from the proceeds obtained by the Committee from such disposal.

(c) *Operating reserve.* The Committee, with the approval of the Secretary, may establish and maintain during one or more crop years an operating monetary reserve in an amount not to exceed 50 percent of the average of expenses incurred during the most recent five preceding crop years, except that an established reserve need not be reduced to conform to any recomputed average. Funds in reserve shall be available for use by the Committee for expenses authorized pursuant to § 987.71.

(d) *Refunds.* Funds held by the Committee at the conclusion of the crop year in excess of the crop year's expenses, including reserve requirements, may be used to defray expenses for no more than the ensuing four months, and thereafter within a reasonable time the Committee shall credit, or upon demand, refund the aforesaid excess to handlers who contributed to such excess: *Provided,* That the excess due any handler may be applied, in whole or in part, by the Committee to any outstanding obligation due the Committee from such handler. A handler's share of the excess funds shall be the amount of assessments he paid in excess of his actual pro rata share of the expenses, including reserve requirements, of the Committee for the preceding crop year. Upon termination of this subpart any money in possession of the Committee shall be distributed in such manner as the Secretary may direct: *Provided,* That, to the extent practicable, such funds shall be returned pro rata to the persons from whom such funds were collected.

[27 FR 6818, July 19, 1962, as amended at 29 FR 9707, July 18, 1964; 43 FR 4253, Feb. 1, 1978]

Miscellaneous Provisions

§ 987.76 Compliance.

No handler shall handle any dates (including dates for further processing) except in conformity with, and as

authorized by or pursuant to, the applicable provisions of this part, including but not being limited to the regulations relating to grade, size, and volume; and no handler shall use or otherwise dispose of restricted dates or any other dates which have not been certified for handling or for further processing except in conformity with, and as authorized by or pursuant to, the applicable provisions of this part.

§ 987.77 Personal liability.

No member or alternate member of the committee, or any employee or agent thereof, shall be held personally responsible, either individually or jointly with others, in any way whatsoever, to any handler or any other person for errors in judgment, mistakes, or other acts either of commission or omission, as such member, alternate member, agent, or employee, except for acts of dishonesty, willful misconduct or gross negligence.

§ 987.78 Separability.

If any provision of this part is declared invalid, or the applicability thereof to any person, circumstance, or thing is held invalid, the validity of the remainder of this part or the applicability of this part to any other person, circumstance, or thing shall not be affected thereby.

§ 987.79 Derogation.

Nothing contained in this part is, or shall be construed to be, in derogation or in modification of the rights of the Secretary or of the United States to exercise any powers granted by the act or otherwise, or, in accordance with such powers, to act in the premises whenever such action is deemed advisable.

§ 987.80 Duration of immunities.

The benefits, privileges, and immunities conferred upon any person by virtue of this subpart shall cease upon its termination except with respect to acts done under and during its existence.

§ 987.81 Agents.

The Secretary may, by a designation in writing, name any person, including any officer or employee of the United States Government, or name any bureau or division of the United States Department of Agriculture, to act as his agent or representative in connection with any of the provisions of this part.

§ 987.82 Effective time, suspension, or termination.

(a) *Effective time.* The provisions of this part, as well as any amendments hereto, shall become effective at such time as the Secretary may declare, and shall continue in force until terminated or suspended in one of the ways hereinafter specified in this section.

(b) *Suspension or termination*—(1) *Failure to effectuate policy of act.* The Secretary shall terminate or suspend the operation of any or all of the provisions of this part, whenever he finds that such provisions do not tend to effectuate the declared policy of the act.

(2) *When favored by growers.* The Secretary shall terminate the provisions of this part at the end of any crop year whenever he finds that such termination is favored by a majority of the growers of dates who, during that crop year, have been engaged in the production for market of dates in the area of production: *Provided,* That such majority have, during such period, produced for market more than 50 percent of the volume of such dates produced for market within said area; but such termination shall be effective only if announced on or before August 1 of the then current crop year.

(3) *If enabling legislation is terminated.* The provisions of this part shall, in any event, terminate whenever the provisions of the act authorizing them cease to be in effect.

(c) *Proceedings after termination*—(1) *Designation of trustees.* Upon the termination of the provisions hereof, the members of the Committee then functioning shall continue as joint trustees, for the purpose of liquidating the affairs of the Committee, of all funds and property then in the possession or under the control of the Committee, including claims for any funds unpaid or property not delivered at the time of such termination. Action by said trusteeship shall require the

concurrence of a majority of the said trustees.

(2) *Duties of trustees.* Said trustees shall continue in such capacity until discharged by the Secretary; shall, from time to time, account for all receipts and disbursements and deliver all property on hand, together with all books and records of the Committee and the joint trustees, to such person as the Secretary may direct; and shall, upon request of the Secretary, execute such assignments or other instruments necessary or appropriate to vest in such persons full title and right to all funds, property, and claims vested in the Committee or the joint trustees pursuant hereto.

(3) *Obligations of persons other than Committee members and trustees.* Any person to whom funds, property, or claims have been transferred or delivered by the Committee or its members, pursuant to this section, shall be subject to the same obligations imposed upon the members of the said Committee and upon the said joint trustees.

[27 FR 6818, July 19, 1962, as amended at 36 FR 15039, Aug. 12, 1971]

§ 987.83 Effect of termination or amendment.

Unless otherwise expresaly provided by the Secretary, the termination hereof or of any regulation issued pursuant to this part, or the issuance of any amendment to either thereof, shall not—

(a) Affect or waive any right, duty, obligation, or liability which shall have arisen or which may thereafter arise in connection with any provision of this part or any regulation issued hereunder, or

(b) Release or extinguish any violation of this part or of any regulation issued hereunder, or

(c) Affect or impair any rights or remedies of the Secretary or of any other person, with respect to any such violation.

§ 987.84 Amendments.

Amendments hereto may be proposed, from time to time by any person or by the Committee.

Subpart—Administrative Rules

SOURCE: 37 FR 23325, Nov. 2, 1972, unless otherwise noted.

DEFINITIONS

§ 987.101 Lot.

"Lot" means the aggregate quantity of dates of the same variety, style, type and grade in like containers with like identification either (a) packed as a continuous production segment, or (b) offered for inspection as a shipping, storage, or other unit.

§ 987.102 Lot number.

"Lot number" is synonymous with code and means a combination of letters or numbers, or both, acceptable to the Committee, showing at least the date of packing, the variety, and the outlet category of the dates. The combination of letters or numbers, or both, imprinted on the containers shall differ from those of any other lot coded within a 3-year period.

§ 987.104 Major marketing promotion.

A major marketing promotion program is one requiring the expenditure of more than $500 of Committee funds.

[43 FR 28435, June 30, 1978]

§ 987.105 Whole equivalent of pitted dates.

For the purposes of this part, the whole date equivalent weight of pitted dates shall be determined by dividing the weight of the pitted dates by 0.875.

[43 FR 28435, June 30, 1978]

IDENTIFICATION AND OUTLET SPECIFICATIONS

§ 987.112 Identification of dates.

(a) *General.* Prior to applying the markings required by this section, each handler shall remove or delete from each container all former identifying marks which conflict with those applicable to the dates currently in the container. Dates of each outlet category shall be held, stored, or shiped in a manner to preserve their identity. Except as provided in para-

graph (d) of this section, the markings on the containers shall be not less than five-sixteenths (5/16) inch in height on containers exceeding 5 pounds net weight and not less than one-eighth (1/8) inch in height on smaller containers. All markings shall be legible.

(b) *DAC dates.* Each handler shall mark every shipping or storage container (excluding subcontainers) of DAC dates with his name or that of the distributor for whom the handler is packing, and the lot number. Under the supervision of the inspection service every container shall be marked with the date of inspection, the name or insignia of the inspection service, and the letters "DAC".

(c) *FP dates.* Each handler shall mark every shipping or storage container (excluding subcontainers) of FP dates with his name or that of the distributor for whom the handler is packing, and the lot number. Under the supervision of the inspection service every container shall be marked with the date of inspection, the name or insignia of the inspection service, and the letters "FP".

(d) *Export dates.* Each handler shall mark every shipping or storage container (excluding subcontainers) of Export dates with his name or that of the exporting firm, and the lot number. If the dates, including field-run dates with cull dates removed, are certified as meeting the grade and size requirements for export to approved countries other than Mexico, the containers shall be marked "Export". Dry dates for processing packed for shipment to approved countries shall be marked "Export Dry". Dates packed for export to Mexico shall be marked "Export Mexico". However, "Export Mexico" shall be in letters not less than three-fourths (3/4) inch in height on containers exceeding 5 pounds net weight, and not less than one-eighth (1/8) inch in height on smaller containers. DAC dates and FP dates, marked pursuant to paragraphs (b) and (c), respectively, of this section, may be exported without change of marking.

(e) *Product and utility dates.* Each handler shall mark every shipping or storage container (excluding subcontainers) of Product dates, or Utility dates when approved for use in products, with the lot number and, if for shipment outside the area of production, with the word "Product" or "Utility", as applicable. Whenever a handler, or an approved date product manufacturer, utilizes a procedure that maintains the identity of the lot and assures that the dates will be used in products or exported, the Committee may waive the requirements of this paragraph for that lot.

(f) *Unidentified dates.* If a handler loses the identity of any lot of dates previously inspected and certified as marketable dates, the certification as to such lot shall be void.

[43 FR 28436, June 30, 1978]

§ 987.112a Grade, size, and container requirements for each outlet category.

(a) In lieu of the minimum standards prescribed in § 987.39, the following standards are prescribed as the minimum grades and sizes for marketable dates to be handled in the applicable outlets. These standards shall continue in effect irrespective of whether the season average price to producers for dates is or is not in excess of the parity level specified in section 2(1) of the act.

(b) *DAC dates.* (1) All varieties of DAC dates may be handled in the United States, Canada, or any other outlet established for dates of lesser grades or sizes.

(2) DAC dates of any variety shall at least meet the requirements of U.S. Grade B, except that up to 25 percent, by weight, of the dates may possess semi-dry of dry calyx ends, but not more than 5 percent, by weight, of the dates may possess dry calyx ends. Also, with respect to whole dates of the Deglet Noor variety, the individual dates in the samples from a lot shall weigh at least 6.5 grams but up to 10 percent, by weight, may weigh less than 6.5 grams. These size requirements are in addition to, and do not supersede, the requirements as to uniformity of size prescribed in the grade standards.

(3) DAC dates of any variety, when packed in plastic containers, other than bags and master shipping containers, shall contain a net weight (i)

for whole dates, of either eight ounces, twelve ounces, 1 pound 8 ounces, or more than two pounds, and (ii) for pitted dates, of either seven ounces, ten ounces, one pound, one pound eight ounces, or more than two pounds. DAC dates packed in other than plastic containers may be handled without regard to the net weight content. For the purpose of this subparagraph, "plastic container" means any containers of any shape made from plastic and in which dates are packed without the use of cardboard boats, trays, or other like stiffening material: *Provided*, That DAC dates shipped for sale in Canada in plastic containers are exempt from the net weight requirements of this subparagraph.

(4) The California Date Administrative Committee may designate with the approval of the Secretary such other types and sizes of containers for testing in connection with a research project conducted by or in cooperation with the Committee. The time period and the quantity of dates which may be marketed by handlers during that period shall be designated by the Committee for each market research project. The handling of each lot of dates in such test containers shall be subject to the prior approval, and under the supervision, of the Committee.

(c) *Dates for further processing.* (1) Except as provided in § 987.152(b)(1), all varieties of FP dates may be disposed of only (i) to persons in the United States capable of processing and packing the dates and having them certified as DAC dates, or (ii) exported to the countries designated in paragraph (d)(2) of this section.

(2) FP dates of any variety shall at least meet the requirements of U.S. Grade B (dry). Also, with respect to whole dates of the Deglet Noor variety, the individual dates in the samples from the lot shall weigh at least 6.5 grams, but up to 10 percent, by weight, may weigh less than 6.5 grams. These size requirements are in addition to, and do not supersede, the requirements as to uniformity of size prescribed in the grade standards.

(d) *Export dates.* (1) Dates of any variety identified as "Export" dates and inspected and certified as meeting the requirements of this subparagraph may only be exported to any country except Canada. Such dates shall at least meet the requirements of U.S. Grade C: *Provided*, That Deglet Noor dates shall score not less than 31 points for character and 24 points for absence of defects but up to 40 percent, by weight, of the dates may be damaged by broken skin.

(2) *Export of dry dates.* Dates of any variety identified as "Export Dry" and inspected and certified as meeting the requirements of this subparagraph, may only be exported to the following designated date producing and processing countries in North Africa: Morocco, Algeria, Tunisia, Libya, Egypt, and Sudan; and to the following date processing and consuming countries north of the Mediterranean Sea: Spain, France, Belgium, West Germany, Italy, Greece, and the Netherlands. Such dates shall at least meet U.S. Grade C (dry) except for defects removable by washing: *Provided*, That Deglet Noor dates shall score not less than 31 points for character and 24 points for absence of defects but up to 40 percent, by weight, of the dates may be damaged by broken skin.

(3) Dates of any variety identified as "Export—Mexico" and inspected and certified as at least meeting the requirements for Utility dates may only be exported to Mexico. No dates shall be exported to Mexico unless the handler certifies to the Committee and the U.S. Department of Agriculture, on CDAC Form No. 11(a), which shall be submitted to the Committee, that the importing buyer has agreed that such dates will not reenter the United States or be shipped to Canada. The form shall show the identity of the handler, the trucker, the importer, the destination of the dates, the location of the border-crossing station, and such other information as the Committee deems appropriate to perform its duties and excercise its powers under this part.

(4) Whenever field-run dates of any variety are authorized for export to any country, each lot shall consist of at least 85 percent, by weight, of sound dates. "Sound dates" means individual dates which are at least U.S.

Grade C in character and are free of the defects—other than those removable by washing—scored to determine the point requirement applicable to their intended destination.

(5) Dates meeting the grade and size requirements of this paragraph may be disposed of in outlet categories established for dates of lesser grades and sizes.

(e) *Product dates.* (1) Dates of any variety identified as "Product" dates and inspected and certified as at least meeting the requirements of this paragraph may be disposed of by handlers for use or used by them in the production of table syrup, rings, chunks, pieces, butter, paste, and macerated dates or other products approved by the Committee. If the handler does not use the dates in products, he may sell them to: (i) Other handlers within the area of production for conversion into products, or (ii) to date product manufacturers approved by the Committee regardless of their location. Once the dates have been converted from their whole or pitted form, they may be shipped to any market in the United States, Canada, or foreign country.

(2) Product dates of any variety and identified as "Product" shall meet the requirements of U.S. Grade C, except that mashing and mechanical injury not affecting eating quality shall not be considered in determining the defect factor.

(f) *Utility dates.* Utility dates may be disposed of by handlers in the same outlets and subject to the same requirements prescribed in paragraph (e) of this section for Product dates, or may be exported to Mexico.

(g) *Change of outlet.* A handler may change the outlet category for any lot of dates: *Provided,* That prior to such change, the handler files a completed CDAC Form No. 1(a) and a new inspection certificate with the Committee. If the grade and size requirements of the new outlet category are the same as or less than the requirements of the outlet category previously intended, only a condition inspection is required. If the grade and size requirements of the new outlet category are greater, a complete inspection is required. The handler shall change the marking on the containers to conform with the identification requirements prescribed in § 987.112 for the new outlet.

(h) *Deteriorated dates.* Any marketable dates which deteriorated in quality so that they are either utility or cull dates may be disposed of only in the applicable outlets for such dates or they may be reconditioned and upon reconditioning, the modified lot may be reinspected and recertified, as applicable.

[43 FR 28436, June 30, 1978, as amended at 47 FR 4489, Feb. 1, 1982; 47 FR 23417, May 28, 1982; 48 FR 176, Jan. 11, 1983]

EFFECTIVE DATE NOTE: At 49 FR 50600, Dec. 31, 1984, § 987.112a(c)(2) was temporarily amended. Paragraph (c)(2) will remain in effect from December 31, 1984 through September 30, 1985 as set forth below.

§ 987.112a Grade, size, and container requirements for each outlet category.

* * * * *

(c) * * *

(2) FP dates of any variety shall at least meet the requirements of U.S. Grade B (dry). Also, with respect to whole dates of the Deglet Noor variety, the individual dates in the sample from the lot shall weigh at least 6.5 grams, but up to 10 percent, by weight, may weigh less than 6.5 grams, except beginning December 31, 1984 and ending September 30, 1985, the 10 percent tolerance shall be increased to 15 percent. These size requirements are in addition to, and do not supersede, the requirements as to uniformity of size prescribed in the grade standards.

* * * * *

NOMINATIONS

§ 987.124 Nomination and polling.

(a) Date producers and producer-handlers shall be provided an opportunity to nominate individuals to serve on the Committee. For this purpose, the Committee shall establish a date and place for polling prior to June 15 of each even-numbered year and establish a procedure for casting absentee ballots. The date and place of polling shall be announced at least 6 weeks prior to the polling date by letters to all known date producers and producer-handlers and by Committee

press releases to local newspapers and other news media in the date-producing area. Such letters and press releases shall: (1) Include the names of incumbents who are willing to continue serving on the Committee; (2) inform eligible producers and producer-handlers of the opportunity to propose additional names to be included on the nomination ballots; and (3) state when and where absentee ballots will be available. Additional names to be included on the nomination ballot must be received by the Committee at least 4 weeks prior to the polling date. Absentee ballots and instructions for completing and returning the ballots will be made available by the Committee at least 3 weeks prior to the polling date. Any person eligible to vote must request the ballot in person at the Committee's office or must submit a written request to the Committee for an absentee ballot. All ballots shall provide for write-in candidates and must be returned by the close of business on the polling date to be counted.

(b)(1) *Producers.* Each producer may vote for three producer members and three producer alternate members. No producer may vote more than once for any one person. The three individuals receiving the highest number of votes for the producer member positions shall be the producer member nominees. Individuals nominated for producer member and failing to receive enough votes to become a producer member nominee shall have their names listed with those nominated for producer alternate members and the votes cast for them as member shall be counted with any votes they received for producer alternate member. The three individuals receiving the highest number of votes for the producer alternate member positions shall be the producer alternate member nominees.

(2) *Producer-handlers.* Each producer-handler may vote for one producer-handler member and one producer-handler alternate member, and these votes shall be weighted as provided in § 987.24. No producer-handler may vote more than once for any one person. The six individuals receiving the highest weighted votes for the producer-handler member positions shall be the producer-handler member nominees. Individuals nominated for producer-handler member and failing to receive enough votes to become a producer-handler member nominee shall have their names listed with those nominated for producer-handler alternate members and the votes cast for them as member shall be counted with any votes they received for producer-handler alternate member. The six individuals receiving the highest weighted vote for producer-handler alternate member positions shall be the alternate member nominees.

[43 FR 28437, June 30, 1978]

§ 987.138 Handlers of record.

Prior to handling dates, each person shall file CDAC Form No. 18 with the Committee at the times, and containing the information, prescribed in § 987.38.

[43 FR 28437, June 30, 1978]

Inspection

§ 987.141 Inspection and certification.

Each handler shall furnish, or cause the inspection service to furnish, to the Committee a copy of the inspection certificate issued to him on each lot of dates, and such certificate shall contain at least the following information: (a) The date of inspection; (b) the name of the handler; (c) the lot number and the applicable outlet category set forth in § 987.112a; (d) the variety of dates and weight of the lot; (e) the number and type of containers in the lot; and (f) if the dates (1) are other than field-run dates, a certification as to the grade of the dates and whether or not they meet the applicable grade, size, container, and identification requirements, or (2) are field-run dates, a certification showing the percentage by weight, of sound dates in the lot, and whether or not they meet the identification requirements for such dates.

[43 FR 28437, June 30, 1978]

Volume Regulation

§ 987.145 Withholding obligation.

(a) *Satisfying the withholding obligation.* Any handler may satisfy all or

part of his withholding obligation for any variety of dates for which free and restricted percentages have been established by having an adequate quantity of that variety inspected and certified as meeting the applicable grade, size, and container requirements prescribed by the Committee for any approved restricted date outlet.

(b) *Credit for excess disposition in restricted outlets.* Disposition of marketable dates in restricted outlets in excess of a handler's withholding obligation may be: (1) Transferred pursuant to § 987.45 upon such handler filing a completed CDAC Form No. 14 with the Committee, or (2) credited to the handler's withholding obligation of the following crop year so long as the excess disposition exceeds 199 pounds. However, the quantity so credited shall never exceed 40 percent of the handler's withholding obligation of the crop year in which the excess disposition occurred and 100 percent of the withholding obligation incurred by him during October through December of the crop year following the crop year in which such excess disposition occurred. All such crediting or accumulation shall be contingent upon the Committee receiving, in due course, confirmation that the dates were disposed of in eligible restricted outlets. With respect to exports, the withholding credit shall be granted upon the Committee receiving notification from the inspection service, and in due course a copy of the on board bill of lading or other documentary evidence satisfactory to the Committee.

(c) *FP dates.* Withholding obligations on FP dates shall be based on the weight of such dates when they are inspected and certified. However, if such dates are subsequently processed and packed within the area of production, the withholding obligation shall be adjusted to reflect any increase in weight.

(d) *Dates for deferment of withholding.* Any handler may defer his certification and withholding or disposition of restricted dates by pledging a comparable volume of graded or field-run dates as a surety that he will meet his withholding obligation at a later date. Such deferment shall not be effective until: (1) The handler files with the Committee a CDAC Form No. 12 to set aside graded dates or CDAC Form No. 13 to set aside field-run dates; and (2) the pledged dates are set aside as a lot and identified by the handler as "Restricted" and as "Graded" or "Field-Run", as appropriate, and as to the number of containers, the date of set-aside and whether or not the dates have been inspected. If the handler sets aside field-run dates or disposes of field-run dates in outlets prescribed in or pursuant to § 987.56 to obtain withholding credit for the sound date portion in the lot, the field-run dates shall meet the requirements prescribed in paragraph (f) of this section for eligible field-run dates, as determined by the inspection service.

(e) *Identification of restricted dates.* Any lot of restricted dates not immediately disposed of through exportation to countries approved by the Committee or directed to approved product outlets shall be stored as a lot separate from all other dates and in a specified location with a USDA inspection service tag marked "Restricted".

(f) *Field-run dates.* Field-run dates set aside for the purpose of deferring or meeting any part or all of a withholding obligation shall consist of at least 70 percent, by weight, of sound dates but may contain 10 percent, by weight, of cull dates of which not more than 5 percent may be hidden culls—i.e., dates with internal defects including souring, mold, fermentation, insect infestation, or foreign material.

(g) *Substitution.* Any handler may, under the direction and supervision of the Committee or the inspection service, substitute for any quantity of restricted dates held by him a like quantity of dates of the same variety and of the same or more recent year's production which have been certified and identified as meeting the requirements for restricted dates.

[43 FR 28437, June 30, 1978]

Surplus

§ 987.147 Surplus.

(a) *General.* Surplus dates delivered to the Committee pursuant to § 987.47 shall be pooled for sale to livestock

feeders, distillers, or manufacturers of inedible products: *Provided*, That if any portion of the deliveries differs sufficiently to require separate handling, and earn a different average return, such portion shall be handled as a separate pool. The income from sale of surplus, after deduction of committee expenses, shall be paid to the respective equity holders in the pool or pools, or to their assignees, on the basis of the weight of dates each delivered.

(b) *Delivery.* The Committee may refuse delivery of any surplus dates which it determines are excessively soured, fermented, or adulterated by palm debris, rocks, paper, wood, plastic liners, or other foreign material. If the Committee refuses delivery, the deliverer shall be permitted to clean such dates sufficiently to make them acceptable to the Committee. The weight of each accepted delivery shall be that determined by a public weightmaster or, in the absence of such weight, that determined by the Committee on the basis of the number and size of the containers used in the delivery. Upon delivery of surplus dates to the Committee, the deliverer, or a designee of the Committee shall execute CDAC Form SP-1, Delivery Manifest, showing: (1) The person to receive payment of the net proceeds for the surplus, (2) the date and place of loading, (3) if field surplus, the location and owner of the garden, (4) the type and number of containers loaded or dumped, (5) the net weight of the load, and (6) if the delivery is directly to a buyer's truck, the driver, truck and buyer.

Qualification to Regulation

§ 987.151 Interhandler transfers.

When any handler transfers dates, other than product dates, to another handler, the selling handler shall promptly notify the Committee by filing with it a completed CDAC Form No. 1 and shall show the name and address of the transferring or selling handler and of the receiving or buying handler, the variety and processed category or classification of the dates, the lot number and inspection certificate number on any lot of packed and certified dates, the number and type of containers, the net weight of the transferred dates, and if applicable, the transferring handler's statement on assuming the withholding and assessment obligation. A transfer of products dates between handlers shall be reported as a disposition by the selling handler filing with the Committee a completed CDAC Form No. 8.

[37 FR 23325, Nov. 2, 1972, as amended at 43 FR 28438, June 30, 1978]

§ 987.152 Exemption from regulations.

(a) *Producer exemption.* The Committee may permit any producer to sell dates of his own production free of the requirements of §§ 987.41, 987.45, 987.48, and 987.72 when sold directly to consumers through a roadside stand or date shop owned or operated by him within 25 miles of the city limits of Indio, Calif., or through shipments by parcel post or express. Permission to so sell dates shall be granted only upon the producer filing with the Committee a completed CDAC Form No. 9 wherein the producer describes how he plans to sell and agrees to sell only dates of DAC date quality of his own production in his direct sales and to report his sales. If the producer fails to comply with his agreement the Committee may revoke any or all exemptions granted the producer.

(b) *Handler exemptions*—(1) *Specialty sales.* The Committee may permit any handler to sell to health food stores or health food outlets, dates which at least meet the requirements for FP dates. It may permit any handler to sell to a candy manufacturer hand-pitted dates which meet the grade requirements for DAC dates except for size, or damage due to cutting and pitting. Also, it may permit any handler to sell hand-layered dates in tin, wood, plastic, or other type of container exempt from §§ 987.41(a) and 987.48, or to make shipments by common carrier of up to 150 pounds to any one purchaser in any one day exempt from the provisions of § 987.41(a): *Provided*, That the hand-layered dates or the shipment to a single purchaser in any 1 day have been packed from dates certified as meeting the grade requirements for

DAC dates and have not been commingled with other dates. Permission to use these exemptions shall be granted only upon the handler filing with the Committee its CDAC Form No. 10 wherein he describes how he plans to sell, and agrees to sell only specific dates and to report such sales.

(2) *Donations.* The Committee may permit any handler to donate Utility or marketable dates other than DAC dates to needy persons, prisoners, or Indians on reservations. Before such donation is made, such handler shall file a request for donation with the Committee detailing the quantity and grade of dates involved and the name and address of the intended donee. The donation may be subject to Committee surveillance, verification by written documentation of receipt by the donee, and any other safeguards necessary to assure consumption in these outlets.

[37 FR 23325, Nov. 2, 1972, as amended at 43 FR 28438, June 30, 1978]

§ 987.157 Approved date product manufacturers.

Any date handler or other person with facilities for converting dates into products may apply to the Committee, by filing CDAC Form No. 3, for listing as an approved date product manufacturer. The applicant shall indicate on such form the products he intends to make, the quantity of dates he may use, and the location of his facilities. In addition, as a condition of approval, the applicant shall agree on such form not to use any of the products dates for sale as whole or pitted dates, to file a report of the disposition of each lot on the Committee's Form No. 8, and to file an annual usage and inventory report on CDAC Form No. 4. The Committee shall approve or disapprove each such application on the basis of the information furnished or its own investigation, and may revoke any approval for cause. The name and address of all approved manufacturers shall be placed on a list and made available to interested persons.

Reports and Records

§ 987.161 Handler carryover.

Each handler shall file with the Committee, a report of his carryover of dates as of March 1 and October 1 and, when volume regulation is established, as of January 1. This report shall be on CDAC Form No. 5 and shall show, by variety, at least: (a) The quantity of DAC dates held within and outside the area, (b) the quantity of FP dates held within the area, (c) the quantity of export dates and utility dates, and (d) the quantity of dates held graded but not certified, and as field-run, segregated as to outlet category.

[43 FR 28438, June 30, 1978]

§ 987.162 Handler acquisition and disposition.

Handlers shall file CDAC Form No. 6 with the Committee by the 10th of each month, reporting at least the following for the preceding month: (a) Their acquisition of field run dates; (b) their shipments of marketable dates in each outlet category; (c) their shipments of free dates and disposition of restricted dates, whenever applicable, and (d) their purchase from other handlers of DAC, Export, Product, Graded and field run dates. In addition, this report shall include the names and addresses of any producers not previously identified pursuant to § 987.38, the quantity of dates acquired from each producer, the location of such producer's date garden, the acreage of that garden, and the estimated current season's production from that garden.

[46 FR 9917, Jan. 30, 1981]

§ 987.164 Shipments of product dates or utility dates and dispositions of restricted dates in approved product outlets.

Each handler shall file with the Committee a completed CDAC Form No. 8 showing the shipment of each lot of product or utility dates or the disposition of restricted dates in approved product outlets. This report shall be filed promptly after shipment or disposition of those dates and shall

identify the lot, the outlet, the number of containers, and the net weight of the dates. If such dates are sold to an approved date product manufacturer, a copy of the completed form shall be signed and dated by the manufacturer and returned to the Committee. If the lot was certified as product dates and is exported to Mexico, the handler shall submit completed CDAC Form No. 8 together with completed CDAC Form No. 11(a) to the Committee.

[43 FR 28439, June 30, 1978]

§ 987.165 Other reports.

(a) *Exempt sales.* Each handler shall file with the Committee, a completed CDAC Form No. 2 showing the quantity and variety of dates sold under exemption during the crop year. The report shall be filed upon the completion of such sales or promptly after the end of the crop year.

(b) *Products.* Each approved date product manufacturer shall file with the Committee a completed CDAC Form No. 4 showing his beginning and ending inventories of product dates, the quantity received during the crop year, the quantity used, the type and quantity of products manufactured, and his year-end inventory of products. This report shall be filed promptly after the end of each crop year.

[37 FR 23325, Nov. 2, 1972, as amended at 43 FR 28439, June 30, 1978]

§ 987.168 Handler records.

Each handler shall establish complete records which accurately show the quantity of dates handled, disposed of, and withheld. These records shall be maintained for at least 2 years after the end of the crop year of record. Records shall show:

(a) For grower deliveries of dates, the name of each grower, the varieties delivered and the net weight of each variety;

(b) For shipments of dates, the variety, type of pack, net weight and destination or name and address of the person to whom each shipment was sent;

(c) If different from shipments, the variety, type of pack, net weight and purchaser of each quantity of dates sold; and

(d) Manifests, invoices, weight certificates, inventory tabulations, or any other documents necessary to prepare, file, or substantiate the reports required to be filed with the Committee.

[37 FR 23325, Nov. 2, 1972, as amended at 43 FR 28439, June 30, 1978]

§ 987.172 Adjustment of assessment obligation.

In accordance with §§ 987.45 and 987.72, the assessment obligation of FP dates shall be based on the weight of the dates at the time of inspection and certification. However, if such dates are subsequently processed and packed within the area of production, the assessment obligation shall be adjusted to reflect any increase in weight and the obligation shall be placed on the handler agreeing to assume it.

[43 FR 28439, June 30, 1978]

PART 989—RAISINS PRODUCED FROM GRAPES GROWN IN CALIFORNIA

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AUTHORITY: Secs. 1-19, 48 Stat. 31, as amended, 7 U.S.C. 601-674.

Subpart—Order Regulating Handling

SOURCE: 25 FR 12813, Dec. 14, 1960; 27 FR 2506, Mar. 16, 1962, unless otherwise noted.

DEFINITIONS

§ 989.1 Secretary.

"Secretary" means the Secretary of Agriculture of the United States or any officer or employee of the United States Department of Agriculture to whom authority has heretofore been delegated or to whom authority may hereafter be delegated, to act in his stead.

§ 989.2 Act.

"Act" means Public Act No. 10, 73d Congress, as amended, and as re-enacted and amended by the Agricultural Marketing Agreement Act of 1937, as amended (Secs. 1-19, 48 Stat. 31, as amended; 7 U.S.C. 601-674).

[42 FR 37201, July 20, 1977]

§ 989.3 Person.

"Person" means an individual, partnership, corporation, association, or any other business unit.

§ 989.4 Area.

"Area" means the State of California.

§ 989.5 Raisins.

"Raisins" means grapes of any variety grown in the area, from which a significant part of the natural moisture has been removed by sun-drying or artificial dehydration, either prior to or after such grapes have been removed from the vines. Removal of a significant part of the natural moisture means removal which has progressed to the point where the grape skin develops wrinkles characteristic of wrinkles in fully formed raisins.

[37 FR 19622, Sept. 21, 1972]

§ 989.6 [Reserved]

§ 989.7 Golden Seedless raisins.

"Golden Seedless raisins" means raisins, the production of which includes soda dipping, sulfuring, and artificial dehydration.

§ 989.8 Natural condition raisins.

"Natural condition raisins" means raisins the production of which includes sun-drying or artificial dehydration but which have not been further processed to a point where they meet any of the conditions for "packed raisins", as defined in § 989.9.

[25 FR 12813, Dec. 14, 1960, as amended at 42 FR 37201, July 20, 1977]

§ 989.9 Packed raisins.

"Packed raisins" means raisins which have been stemmed, graded, sorted, cleaned, or seeded, and placed in any container customarily used in the marketing of raisins or in any container suitable or usable for such marketing. Raisins in the process of being packed or raisins which are partially packed shall be subject to the same requirements as packed raisins.

§ 989.10 Varietal types.

"Varietal types" means raisins generally recognized as possessing characteristics differing from other raisins in a degree sufficient to make necessary or desirable separate identification and classification. Varietal types are the following: Natural (sun-dried) Seedless, Dipped Seedless, Golden Seedless, Muscats (including other raisins with seeds), Sultana, Zante Currant, Monukka, and Oleate and Related Seedless: *Provided*, That the Committee may, subject to approval of the Secretary, change this list of varietal types.

[48 FR 32974, July 20, 1983]

§ 989.11 Producer.

"Producer" means any person engaged in a proprietary capacity in the production of grapes which are sun-dried or dehydrated by artificial means until they become raisins: *Provided*, That a "producer" shall include any person whose production unit has qualified for diversion under a diversion program announced by the Committee.

[50 FR 1831, Jan. 14, 1985]

§ 989.12 Dehydrator.

"Dehydrator" means any person who produces raisins by dehydrating grapes by artificial means.

§ 989.12a Cooperative bargaining association.

"Cooperative bargaining association" means a nonprofit cooperative association of raisin producers engaged within the area in bargaining with handlers as to price and otherwise arranging for the sale of natural condition raisin of its members.

[32 FR 12158, Aug. 24, 1967]

§ 989.13 Processor.

"Processor" means any person who receives or acquires natural condition raisins, off-grade raisins, other failing raisins or raisin residual material and uses them or it within the area, with or without other ingredients, in the production of a product other than raisins, for market or distribution.

[32 FR 12158, Aug. 24, 1967; 33 FR 2983, Feb. 15, 1968, as amended at 42 FR 37201, July 20, 1977]

§ 989.14 Packer.

"Packer" means any person who, within the area, stems, sorts, cleans, or seeds raisins, grades stemmed raisins, or packages raisins for market as raisins: *Provided*, That:

(a) No producer with respect to the raisins produced by him, and no group of producers with respect to raisins produced by the producers comprising the group, and not otherwise a packer, shall be deemed a packer if he or it sorts or cleans (with or without water) such raisins in their unstemmed form;

(b) Any dehydrator shall be deemed to be a packer, with respect to raisins dehydrated by him, only if he stems, cleans with water subsequent to such dehydration, seeds or packages them for market as raisin;

(c) The committee may, with the approval of the Secretary restrict the exceptions as to permitted cleaning if necessary to cause delivery of sound raisins; and

(d) No person shall be deemed a packer by reason of the fact he repackages for market (with or without additional preparation) packed raisins which, in the hands of a previous holder, have been inspected and certified as meeting the applicable minimum grade standards for packed raisins.

[32 FR 12158, Aug. 24, 1967]

§ 989.15 Handler.

"Handler" means: (a) Any processor or packer; (b) any person who places, ships, or continues natural condition raisins in the current of commerce from within the area to any point outside thereof; (c) any person who delivers off-grade raisins, other failing raisins or raisin residual material to other than a packer or other than into any eligible non-normal outlet; or (d) any person who blends raisins: *Provided*, That blending shall not cause a person not otherwise a handler to be a handler on account of such blending if he is either: (1) A producer who, in his capacity as a producer, blends raisins entirely of his own production in the

course of his usual and customary practices of preparing raisins for delivery to processors, packers, or dehydrators; (2) a person who blends raisins after they have been placed in trade channels by a packer with other such raisins in trade channels; or (3) a dehydrator who, in his capacity as a dehydrator, blends raisins entirely of his own manufacture.

[37 FR 19622, Sept. 21, 1972]

§ 989.16 Blend.

"Blend" means to mix or commingle raisins.

§ 989.17 Acquire.

"Acquire" means to have or obtain physical possession of raisins by a handler at his packing or processing plant or at any other established receiving station operated by him: *Provided,* That a handler shall not be deemed to acquire any raisins (including raisins produced or dehydrated by him) while: (a) He stores them for another person or as handler-produced tonnage in compliance with the provisions of §§ 989.58 and 989.70; (b) he reconditions them, or; (c) he has them in his possession for the purpose of inspection; and *Provided further,* That the term shall apply only to the handler who first acquires the raisins.

§ 989.18 Committee.

"Committee" means the Raisin Administrative Committee established under § 989.26.

[41 FR 32412, Aug. 3, 1976]

§ 989.20 Ton.

"Ton" means a short ton of 2,000 pounds.

§ 989.21 Crop year.

"Crop year" means the 12-month period beginning with August 1 of any year and ending with July 31 of the following year.

[41 FR 32412, Aug. 3, 1976]

§ 989.22 District.

"District" means any one of the geographical areas referred to in § 989.26, and designated in the rules and regulations.

[48 FR 32974, July 20, 1983]

§ 989.23 File.

"File" means transmit or deliver to the Secretary or committee, as the case may be, and such act shall be deemed to have been accomplished at the time: (a) Of actual receipt by the Secretary or committee in the event of personal delivery; (b) of receipt at the office of the telegraph company, in case submission is by telegram; or (c) shown by the postmark, in case submission is by mail.

§ 989.24 Standard raisins, off-grade raisins, other failing raisins, and raisin residual material.

(a) "Standard raisins" means raisins which meet the then effective minimum grade and condition standards for natural condition raisins.

(b) "Offgrade raisins" means raisins which do not meet the then effective minimum grade and condition standards for natural condition raisins: *Provided,* That raisins which are certified as off-grade raisins shall continue to be such until successfully reconditioned or become "other failing raisins."

(c) "Other failing raisins" means any raisins received or acquired by a handler, either as standard raisins or offgrade raisins, which are processed to a point where they qualify as packed raisins but fail to meet the applicable minimum grade standards for packed raisins.

(d) "Raisin residual material" means defective raisins, stemmer waste, sweepings, and other residue accumulated by a handler from reconditioning raisins or from processing standard raisins and other failing raisins.

[25 FR 12813, Dec. 14, 1960, as amended at 42 FR 37201, July 20, 1977]

§ 989.24a Non-normal outlets.

"Non-normal outlets" means outlets other than those customarily used for commercial disposition of raisins meeting the then applicable minimum standards for natural condition raisins or packed raisins.

[29 FR 9483, July 11, 1964]

§ 989.25 Part and subpart.

"Part" means the order regulating the handling of raisins produced from grapes grown in California, and all rules, regulations, and supplementary orders issued thereunder. This order regulating the handling of raisins produced from grapes grown in California shall be a "subpart" of such part.

RAISIN ADMINISTRATIVE COMMITTEE

§ 989.26 Establishment and membership.

A Raisin Administrative Committee is hereby established consisting of 47 members of whom 35 shall represent producers, 10 shall represent handlers, 1 shall represent the cooperative bargaining association(s) and 1 shall be a public member. The producer members shall be selected as follows:

(a) Producer members representing the cooperative marketing association(s) shall be members of such association(s) engaged in the handling of raisins, each of which acquired not less than 10 percent of the total raisin acquisitions during the preceding crop year, and those members shall be equal to the product, rounded to the nearest whole number, obtained by multiplying 35 by the ratio the cooperative marketing association(s) raisin acquisitions are to the acquisitions of all handlers during the preceding crop year.

(b) Producer members representing cooperative bargaining association(s) shall be members of such associations, and the number of those members shall be equal to the product, rounded to the nearest whole number, obtained by multiplying 35 by the ratio the raisins acquired by handlers from bargaining association members are to the total acquisitions of all handlers during the preceding crop year.

(c) All other producer members who shall not be members of a cooperative bargaining association(s), cooperative marketing association(s) engaged in the handling of raisins which acquired 10 percent or more of the total acquisitions during the preceding crop year, nor sold for cash to cooperative marketing association(s), shall represent all producers not defined in paragraph (a) or (b) of this section and shall be selected in the number and, when appropriate, for the districts as designated in the rules and regulations.

(d) The handler members shall be divided into two groups and include the following:

(1) Handler members shall be selected from and represent cooperative marketing association(s) engaged in the handling of raisins each of which acquired not less than 10 percent of the total raisin acquisitions during the preceding crop year, and the number of those members shall be equal to the product, rounded to the nearest whole number, obtained by multiplying 10 by the ratio of the cooperative marketing association(s) raisin acquisitions are to the total acquisitions of all handlers during the preceding crop year.

(2) The remaining handler members shall be selected from and represent all other handlers, which would include all independent handlers and small cooperative marketing association(s) who acquired less than 10 percent of the total raisin acquisitions during the preceding crop year. Handler nominees for this group shall be nominated by all handlers in the group in a manner determined by the Committee, with the approval of the Secretary, and specified in the rules and regulations.

(e) The "cooperative" bargaining association'(s) member shall be selected from the cooperative bargaining association(s). The public member shall be nominated by the Committee and selected by the Secretary as public member.

(f) For each member of the Committee there shall be an alternate member who shall have the same qualifications as the member for whom he is an alternate.

[48 FR 32974, July 20, 1983]

§ 989.27 Eligibility.

No person shall be selected or continue to serve as a member or alternate member of the Committee who is not actively engaged in the business of the group which he represents either in his own behalf, or as an officer, agent, or employee of a business unit engaged in such business: *Provided*, That only producers, as defined in § 989.11, engaged as such with respect

to the most recent grape crop, are eligible to serve on the Committee. Only handlers who packed or processed raisins during the then current crop year shall be eligible to represent handlers on the Committee. Any handler eligible to represent a particular group shall continue to represent handlers for the entire term for which he was selected.

[48 FR 32974, July 20, 1983]

§ 989.28 Term of office.

The term of office of all representatives serving on the Committee shall be for two years and shall end on April 30 of even numbered calendar years, but each such member and alternate member shall continue to serve until their successor is selected and has qualified.

[48 FR 32975, July 20, 1983]

§ 989.29 Initial members and nomination of successor members.

(a) *Initial members.* Members and alternate members of the Committee serving immediately prior to the effective date of this amended subpart shall, if thereafter they are eligible, serve on the Committee until April 30, 1984, and until their respective successors have been selected and qualified.

(b) *Nominations for successor members.* Nominations for successor members and alternate members of the Committee shall be made as follows:

(1) The Committee shall notify the cooperative marketing association(s) engaged in handling not less than 10 percent of the total raisin acquisitions during the preceding crop year, and cooperative bargaining association(s), of the date by which nominations to fill member and alternate member positions shall be made. The Committee shall give reasonable publicity of a meeting or meetings of producers who are not members of cooperative bagaining association(s), or cooperative marketing association(s) which handled 10 percent or more of the total raisin acquisitions during the preceding crop year, and of independent handlers and cooperative marketing association(s) who handled less than 10 percent of the total raisin acquisitions during the preceding crop year, for the purpose of making nominations to fill the member and alternate member positions prescribed in § 989.26 (c) and (d): *Provided,* That member and alternate member nominations by independent handlers and cooperative marketing association(s) who acquired less than 10 percent of the total raisin acquisitions during the preceding crop year may be made to the Committee by mail in lieu of meetings.

(2) Any producer representing independent producers and producers who are affiliated with cooperative marketing association(s) handling less than 10 percent of the total raisin acquisitions during the preceding crop year must have produced grapes which were made into raisins in the particular district for which he is nominated, to represent said district as a producer member or alternate producer member on the Committee. In the event any such nominees are engaged as producers in more than one district, they may be a nominee for ony one district. One or more producers or producers affiliated with cooperative marketing association(s) handling less than 10 percent of the total raisin acquisitions during the preceding crop year may be nominated for each such producer member or alternate member position. Each independent producer and producer affiliated with cooperative marketing association(s) handling less than 10 percent of the total raisin acquisitions during the preceding crop year shall cast only one vote with respect to each position for which nominations are to be made. The person receiving the majority of the votes with respect to each such position to be filled shall be the person to be certified to the Secretary as the nominee. In the event no person receives a majority there shall be a run off vote between the two persons receiving the largest number of votes. The eligibility of each producer voting in a producer nomination meeting shall be certified by the Committee during or after the meeting, and in the event one or more producers who voted were not eligible and this may have affected the result of any nomination vote, another meet-

ing with respect to such producer nominations shall be held.

(3) One or more eligible handlers for each handler position to be filled may be proposed for nomination to represent independent handlers and cooperative marketing association(s) which acquired less than 10 percent of the total raisin acquisitions during the preceding crop year on the Committee. Nominations shall be made by and from handlers, or employees, representatives or agents of handlers falling within such groups. Each handler shall cast only one vote with respect to each position for which nomination is to be made. The person receiving the most votes with respect to each handler member of handler alternate member position shall be the person to be certified to the Secretary as the nominee for each such position.

(4) Each vote cast shall be on behalf of the person voting, his agent, subsidiaries, affiliates, and representatives. Voting at each meeting shall be in person. The results of each ballot at each handler meeting shall be announced at that meeting. Voting at each meeting of producers shall be by secret ballot. The results of the voting at producer meetings shall be announced by the Committee following the verifications of eligibility of those participating at such meetings.

(5) Each nomination shall be certified by the Committee to the Secretary on or before April 5 immediately preceding the commencement of the term of office of the member or alternate member position for which the nomination is certified.

[48 FR 32975, July 20, 1983]

§ 989.30 Selection.

The Secretary shall select producer, handler, cooperative bargaining association(s), and public members and alternate members in the number specified in 989.26, as applicable, and with the qualifications specified in § 989.27. Such selections may be made from nominations certified pursuant to § 989.29 or from other eligible producers, handlers, or cooperative bargaining association(s) officers or employees.

[48 FR 32975, July 20, 1983]

§ 989.31 Failure to nominate.

In the event nomination for a member or alternate member position on the committee is not certified pursuant to and within the time specified in § 989.29, the Secretary may select an eligible person to fill such position without regard to nomination.

[41 FR 32412, Aug. 3, 1976]

§ 989.32 Acceptance.

Each person to be selected by the Secretary as a member or as an alternate member of the Committee shall, prior to such selection, qualify by advising the Secretary that he/she agrees to serve in the position for which nominated for selection.

[48 FR 32975, July 20, 1983]

§ 989.33 Alternate members.

The alternate for a member of the committee shall act in the place and stead of such member (a) during his absence, and (b) in the event of his removal, resignation, disqualification, or death, until a successor for such member's unexpired term has been selected and has qualified.

[41 FR 32412, Aug. 3, 1976]

§ 989.34 Vacancies.

To fill any vacancy occasioned by the failure of any person selected as a member or as an alternate member of the committee to qualify, or in the event of the removal, resignation, disqualification, or death of any member or alternate member, a successor for such person's unexpired term shall be nominated and selected in the manner set forth in §§ 989.29 and 989.30, insofar as such provisions are applicable. If nomination to fill any vacancy is not filed within 40 calendar days after such vacancy occurs, the Secretary may select an eligible person to fill such vacancy without regard to nomination.

[41 FR 32412, Aug. 3, 1976]

§ 989.35 Powers.

The committee shall have the following powers:

(a) To administer the terms and provisions of this part;

(b) To make rules and regulations to effectuate the terms and provisions of this part;

(c) To recommend to the Secretary amendments to this part; and

(d) To receive, investigate, and report to the Secretary complaints of violations of this part.

[41 FR 32412, Aug. 3, 1976, as amended at 48 FR 32975, July 20, 1983]

§ 989.36 Duties.

The committee shall have, among others, the following duties:

(a) To act as intermediary between the Secretary and any producer, packer, dehydrator, processor or cooperative bargaining association;

(b) To investigate compliance and to use means available to it to prevent violations of this part;

(c) To keep minutes, books, and other records, which shall clearly reflect all of its acts and transactions, and such minutes, books, and other records shall be subject to examination by the Secretary at any time;

(d) To investigate and assemble data on the production, handling and market conditions with respect to raisins;

(e) To submit to the Secretary such available information with respect to raisins and grapes as he may request, and such other information as the committee may deem desirable and pertinent;

(f) To select from among its members a chairman and other officers, and to adopt such rules and regulations for the conduct of its business as it may deem advisable;

(g) To appoint or employ such other persons as it may deem necessary, and to determine the salaries and define the duties of each such person;

(h) To cause the books of the committee to be audited by certified public accountants at least once each year, or at such other times as the committee may deem necessary or as the Secretary may request, and the report of each such audit shall show, among other things, the receipts and expenditures of funds, and at least two copies of each such audit shall be submitted to the Secretary;

(i) To prepare quarterly statements of its financial operations and make such statements, together with the minutes of its meetings, available at the office of the committee for inspection by producers, handlers and dehydrators;

(j) To give reasonable advance notice of the times, places, and purposes of its meetings by mail or other appropriate means to each member and alternate member and such notice shall be given as widespread publicity as is practicable;

(k) To conduct meetings for the purpose of making nominations for membership on the committee and the certifying of nominations made for such purposes to the Secretary;

(l) To establish, with the approval of the Secretary, such rules and procedures relative to administration of this subpart as may be consistent with the provisions contained in this subpart and as may be necessary to accomplish the purposes of the act and the efficient administration of this subpart.

[41 FR 32412, Aug. 3, 1976, as amended at 48 FR 32975, July 20, 1983]

§ 989.37 Obligation.

Upon the removal, resignation, disqualification, or expiration of the term of office of any member or alternate member, such member or alternate member shall account for all receipts and disbursements and deliver to his successor, to the committee, or to a designee of the Secretary all property (including, but not limited to, all books and records) in his possession or under his control as member or alternate member, and he shall execute such assignments and other instruments as may be necessary or appropriate to vest in such successor, committee, or designee full title to such property and funds, and all claims vested in such member or alternate member. Upon the death of any member or alternate member of the committee, full title to such property, funds, and claims vested in such member or alternate member shall be vested in his successor or, until such successor has been selected and has qualified, in the committee.

[41 FR 32412, Aug. 3, 1976]

§ 989.38 Procedure.

The Committee shall meet at the call of the chairman, or vice-chairman when acting as chairman, or at the call of any three members. All decisions of the Committee reached shall be by majority vote of the members present. All votes shall be cast in person and a quorum must be present. The presence of 25 members shall be required to constitute a quorum. The Committee shall give to the Secretary the same notice of meetings of the Committee as it gives to its members.

[48 FR 32976, July 20, 1983]

§ 989.39 Compensation and expenses.

The members of the Committee and the alternate members when acting as members, shall serve without compensation but shall be allowed their necessary expenses as approved by the committee. Whenever specifically authorized in advance by the committee, or when requested to attend due to the anticipated absence of a member, an alternate member of the committee shall be reimbursed for reasonable expenses incurred by him in attending not to exceed three committee meetings per crop year when the committee member for whom he serves as alternate also attends such meetings.

[41 FR 32412, Aug. 3, 1976, as amended at 48 FR 32976, July 20, 1983]

RESEARCH AND DEVELOPMENT

§ 989.53 Research and development.

(a) *General.* The Committee, with the approval of the Secretary, may establish or provide for the establishment of projects involving marketing research and development and marketing promotion including paid advertising, designed to assist, improve, or promote the marketing, distribution, and consumption of raisins in domestic and foreign markets. These projects may include, but need not be limited to those designed to:

(1) Improve through research the accuracy of raisin production estimates;

(2) Improve through research the preparation for market, sanitation, quality, condition, storability, processing, or packaging of raisins;

(3) Ascertain through research the factors affecting acceptance of raisins by manufacturers or consumers;

(4) Promote the marketing, distribution, or consumption of raisins in domestic and foreign markets by collecting data thereon, consulting with members of the trade, and making the information available to producers, handlers, and exporters; and

(5) Promote the marketing, distribution, or consumption of raisins in foreign markets through the use of merchandising programs.

The expense of any such project relating solely to free tonnage raisins shall be paid from funds collected pursuant to § 989.80. The expense of any such project relating solely to reserve tonnage raisins shall be paid from the sale proceeds of such raisins. If any such project encompasses both free tonnage and reserve tonnage raisins, such as one which is designed to promote the consumption in export outlets of raisins generally on a long-term basis, the expense of the project may be allocated between the assessment fund and the pool fund.

(b) *Creditable expenditures.* The Committee, with the approval of the Secretary, may provide for crediting all or any portion of a handler's direct expenditures for marketing promotion, including paid advertising, that promotes the sale of raisins, raisin products, or their use. No handler shall receive credit for any allowable direct expenditures that would exceed the total of his assessment obligation which is attributable to that portion of his assessment designated for marketing promotion including paid advertising.

(c) *Criteria.* Before any project involving marketing promotion, including paid advertising, and the crediting of the handler's pro rata expense assessment obligation of handlers is undertaken pursuant to this section, the Secretary after recommendation by the Committee, shall approve appropriate criteria to effectively regulate such activity.

[48 FR 32976, July 20, 1983]

MARKETING POLICY

§ 989.54 Marketing policy.

(a) *Trade demand.* On or before August 15 of each crop year, the Committee shall hold a meeting to review shipment data, inventory data, and other matters relating to the quantity of raisins of all varietal types. For any varietal type for which a free tonnage percentage may be recommended, the Committee shall compute a trade demand. The trade demand shall be 90 percent of the prior crop year's shipments (converted to a natural condition weight) of free tonnage and reserve tonnage sold for free use for that varietal type, into all market outlets, adjusted by the carryin on August 1 of the current crop year and the desirable carryout for the varietal type at the end of that crop year. If the prior year's shipments were limited because of crop conditions, the Committee may select the shipments of one of the three years preceding the prior crop year. The desirable carryout shall be increased from 45,000 to 60,000 tons for Natural (sun-dried) Seedless raisins at a rate of 5,000 tons per year for three crop years following the effective date of this amended subpart. The desirable carryout for Dipped Seedless raisins shall be 1,500 tons, and for Oleate and Related Seedless raisins, 1,500 tons. The trade demand computed by the Committee shall be announced by the Committee in accordance with paragraph (h) of this section.

(b) *Preliminary percentages.* On or before October 5 of each crop year (except that the Committee may extend this date not more than five business days if warranted by a late crop), the Committee shall estimate the production of any varietal type of raisins for which it has computed a trade demand. If the Committee determines that volume regulation is desirable during the crop year for that varietal type, it shall compute and announce preliminary free and reserve percentages for that varietal type: *Provided,* That such production estimate shall include by varietal type the raisins handlers are expected to acquire from producers and the total tonnage of raisins diverted under a raisin diversion program. The Committee shall compute a preliminary free percentage to release 85 percent of the computed trade demand, if it determines that a field price has been established for that varietal type, or 65 percent of the trade demand if no field price has been established. The preliminary free percentage shall be computed by multiplying the trade demand by either 85 percent or 65 percent (as the case may be) and dividing the product by the estimated production of that varietal type and rounding the resulting percentage to the nearest full percent. The difference between 100 percent and the preliminary free percentage shall be the preliminary reserve percentage.

(c) *Interim percentages.* Prior to February 15, the Committee may modify the preliminary free and reserve percentages to release less than the trade demand.

(d) *Final percentages.* No later than February 15, the Committee shall recommend to the Secretary, final free and reserve percentages which will tend to release the full trade demand for any varietal type for which preliminary or interim percentages have been computed and announced. The difference between any final free percentage designated by the Secretary and 100 percent shall be the final reserve percentage. With its recommendation, the committee shall report on its consideration of the factors in paragraph (e) of this section.

(e) *Factors.* When computing preliminary and interim percentages, or determining final percentages for recommendation to the Secretary, the Committee shall give consideration to the following factors:

(1) The estimated tonnage held by producers, handlers, and for the account of the Committee at the beginning of the crop year;

(2) The expected general quality and any modifications of the minimum grade standards;

(3) The estimated tonnage of standard and off-grade raisins which will be produced;

(4) If different than the computed trade demand, the estimated trade demand for raisins in free tonnage outlets;

(5) If not estimated as provided in paragraph (a) of this section, an estimated desirable carryout at the end of the crop year for free tonnage and, if applicable, for reserve tonnage;

(6) The estimated market requirements for raisins outside free tonnage outlets, considering the estimated world raisin supply and demand situation;

(7) Current prices being received and the probable general level of prices to be received for raisins by producers and handlers;

(8) The trend and level of consumer income;

(9) Any prohibition of trade practices, pursuant to § 989.62 intended for the crop year; and

(10) Any other pertinent factors bearing on the marketing of raisins including the estimated supply of and demand for other varietal types and regulations applicable thereto.

(f) *Modification.* In the event the Committee subsequently deems it advisable to modify its marketing policy on any crop, because of national emergency, crop failure, or other major change in economic conditions, it shall hold a meeting for that purpose, and file a report thereof with the Secretary within 5 days (exclusive of Saturdays, Sundays, and holidays) after the holding of such meeting, which report shall show such modification and the basis therefor.

(g) *Reserve tonnage to sell as free tonnage.* On or before November 15 of the crop year, the Committee shall make two simultaneous offers of reserve tonnage to handlers to sell as free tonnage for each varietal type for which preliminary percentages have been computed and announced. One offer shall consist of a quantity equal to 10 percent of the prior year's (or the alternative year selected by the Committee pursuant to paragraph (a) of this section) shipments of free tonnage and reserve tonnage sold for free use into all market outlets to equate the current year's supply with the prior year's shipments. This offer shall be allocated to handlers on the basis of their prior year's acquisitions. The second offer, to provide for market expansion, shall consist of a quantity equal to 10 percent of the prior year's (or the alternative year selected by the Committee pursuant to paragraph (a) of this section) shipments of free tonnage and reserve tonnage sold for free use. This offer shall be allocated to handlers on the basis of their prior year's shipments of free tonnage and reserve tonnage sold for free use. Each offer shall be open to handlers not more than five business days, and subsequently, two offers of any tonnage unsold in the original offers open not more than two business days each, may be made. The reoffer tonnage shall be allocated to handlers who purchase 100 percent of their allocation in preceding offers, and shall be on the basis of the quantity each handler purchased, as a percentage of the total quantity purchased by all handlers eligible to participate. At the close of the second reoffer, any remaining tonnage may be offered to handlers who purchased all of their allocations from previous offers on a first-come first-served basis and such offer shall be open to handlers for one business day. Any handler who had no shipments or acquisitions of raisins iduring the prior crop year will be allocated raisins under these offers on the basis of his acquisition (up to the time the original offer is made) of raisins in the current crop year. If field prices are not established, the offer shall be made not more than fifteen days following such establishment. The price of reserve tonnage raisins offered to handlers to sell as free tonnage, pursuant to this paragraph, shall be the established field price for free tonnage raisins of that varietal type, plus 3 percent of the established field price, plus the estimated costs incurred by the Committee for equity holders.

(h) *Publicity.* The Committee shall promptly give reasonable publicity to producers, dehydrators, handlers, and the cooperative bargaining association(s) of each meeting to consider a marketing policy or any modification thereof, and each such meeting shall be open to them. Similar publicity shall be given to producers, dehydrators, handlers, and the cooperative bargaining association(s) of each marketing policy report or modification thereof, filed with the Secretary and

of the Secretary's action thereon. Copies of all marketing policy reports shall be maintained in the office of the Committee, where they shall be made available for examination by any producer, dehydrator, handler, or cooperative bargaining association representative. The Committee shall notify handlers, dehydrators and the cooperative bargaining association(s), and give reasonable publicity to producers of its computation of the trade demand, preliminary percentages, and interim percentages and shall notify handlers, dehydrators, and the cooperative bargaining association(s) of the Secretary's action on percentages by registered or certified mail.

[48 FR 32976, July 20, 1983, as amended at 50 FR 1831, Jan. 14, 1985]

§ 989.55 Regulation by the Secretary.

Whenever the Secretary finds, from the recommendation and supporting information supplied by the Committee or from other available information, that to designate final free and reserve percentages for any varietal type of standard raisins acquired by handlers, during the crop year will tend to effectuate the declared policy of the Act, the Secretary shall designate such percentages. In the event the Secretary finds that suspension or termination of any percentages computed by the Committee or designated by the Secretary tend to effectuate the declared policy of the Act, the Secretary shall suspend or terminate such percentages.

[48 FR 32977, July 20, 1983]

§ 989.56 Raisin diversion program.

(a) *Announcement of program.* On or before November 30 of each crop year, the Committee shall hold a meeting to review production data, supply data, demand data, including anticipated demand to all potential market outlets, desirable carryout inventory and other matters relating to the quantity of raisins of all varietal types. When the Committee determines that raisins exist in the reserve pool in excess of projected market needs for any varietal type, it may announce the amount of such tonnage eligible for diversion during the subsequent crop year. At the same time, the Committee shall determine and announce to producers, handlers, and the cooperative bargaining association(s) the allowable harvest cost to be applicable to such diversion tonnage: *Provided,* That during the 1984-85 crop year, these actions shall be taken as soon as practicable after the effective date of this amended subpart.

(b) *Voluntary diversion.* No producer shall be required to participate in any raisin diversion program.

(c) *Issuance of diversion certificates.* After the Committee announces a raisin diversion program, any producer may divert grapes of his/her own production and receive from the Committee a diversion certificate in accordance with the applicable rules and regulations. Such certificates only may be submitted by producers to handlers in accordance with applicable rules and regulations. Diversion certificates issued by the Committee shall apply to a specific production unit and shall be equal to the creditable fruit weight of such raisins produced on such unit during the prior crop year or the last prior crop year eligible for such diversion: *Provided,* That in the case of a production unit, or partial production unit, removed from production through vine removal or other means established by the Committee, it may issue a diversion certificate in an amount greater than the creditable fruit weight of the raisins produced thereon.

(d) *Redemption of diversion certificates.* Handlers may redeem diversion certificates for reserve pool raisins. To redeem a certificate, a handler must present the diverson certificate to the Committee and pay the Committee an amount equal to the harvest cost it has established, plus an amount equal to the payment for receiving, storing, fumigating, handling, and inspecting reserve tonnage raisins specified in § 989.401 for the entire tonnage represented on the certificate. Upon receipt of the diversion certificate, the Committee shall note on the certificate that it is cancelled.

(e) *Implementation of the program.* The Committee shall establish, with the approval of the Secretary, such rules and regulations as may be neces-

sary for the implementation and operation of a raisin diversion program.

[50 FR 1831, Jan. 14, 1985, as amended at 50 FR 40477, Oct. 4, 1985]

GRADE AND CONDITION STANDARDS

§ 989.58 Natural condition raisins.

(a) *Regulation.* No handler shall acquire or receive natural condition raisins which fail to meet such minimum grade and condition standards as the committee may establish, with the approval of the Secretary, in applicable rules and regulations: *Provided,* That a handler may receive raisins for inspection, may receive off-grade raisins for reconditioning and may receive or acquire off-grade raisins for use in eligible non-normal outlets: *And provided further,* That a handler may acquire natural condition raisins which exceed the tolerance established for maturity under a weight dockage system established pursuant to rules and regulations recommended by the committee and approved by the Secretary. Nothing contained in this paragraph shall apply to the acquisition or receipt of natural condition raisins of a particular varietal type for which minimum grade and condition standards are not applicable or then in effect pursuant to this part.

(b) *Changes in minimum grade and condition standards for natural condition raisins.* The committee may recommend to the Secretary changes in the minimum grade and condition standards for natural condition raisins of any varietal type and may recommend to the Secretary that minimum grade and condition standards for any varietal type be added to or deleted. The committee shall submit with its recommendation all data and information upon which it acted in making its recommendation, and such other information as the Secretary may request. The Secretary shall approve any such change if he finds, upon the basis of data submitted to him by the committee or from other pertinent information available to him, that to do so would tend to effectuate the declared policy of the act.

(c) *Publicity and notice.* The committee shall give prompt and reasonable publicity to producer, dehydrators, and handlers of each recommendation submitted by it to the Secretary and of each regulation issued by the Secretary. Notice of such regulation shall be given to all handlers by registered or certified mail.

(d) *Inspection and certification.* (1) Each handler shall cause an inspection and certification to be made of all natural condition raisins acquired or received by him, except with respect to: (i) An interplant or interhandler transfer of offgrade raisins as described in paragraph (e)(2) of this section, unless such inspection and certification are required by rules and procedures made effective pursuant to this amended subpart; (ii) an interplant or interhandler transfer of free tonnage raisins as described in § 989.59(e); (iii) raisins received from a dehydrator which have been previously inspected pursuant to paragraph (d)(2) of this section; (iv) any raisins for which minimum grade and condition standards are not then in effect; (v) raisins received from a cooperative bargaining association which have been inspected and are in compliance with requirements established pursuant to paragraph (d)(3) of this section; and (vi) any raisins, if permitted in accordance with such rules and procedures as the committee may establish with the approval of the Secretary, acquired or received for disposition in eligible nonnormal outlets. The handler shall be reimbursed by the committee for inspection costs incurred by him and applicable to pool tonnage held for the account of the committee. Except as otherwise provided in this section, prior to blending raisins, acquiring raisins, storing raisins, reconditioning raisins, or acquiring raisins which have been reconditioned, each handler shall obtain an inspection certification showing whether or not the raisins meet the applicable grade and condition standards: *Provided,* That the initial inspection for infestation shall not be required if the raisins are fumigated in accordance with such rules and procedures as the committee shall establish with the approval of the Secretary. The handler shall submit or cause to be submitted to the committee a copy of such certification, together with such other documents

or records as the committee may require. Such certification shall be issued by inspectors of the Processed Products Standardization and Inspection Branch of the U.S. Department of Agriculture, unless the committee determines, and the Secretary concurs in such determination, that inspection by another agency would improve the administration of this amended subpart. The committee may require that raisins held on memorandum receipt be reinspected and certified as a condition for their acquisition by a handler.

(2) The committee may, in accordance with rules and procedures established with the approval of the Secretary, authorize handlers to receive or acquire natural condition raisins which have been produced by any dehydrator by dehydrating grapes by artificial means and have been inspected and certified on his premises. In the event there shall have been compliance with committee requirements, any handler who receives or acquires such inspected and certificated raisins shall be deemed to have satisfied the requirements contained in paragraph (d)(1) of this section with respect to inspection and certification of natural condition raisins received or acquired by him.

(3) The committee may, in accordance with rules and the procedures established with the approval of the Secretary, authorize handlers to receive or acquire without further inspection and certification, natural condition raisins, standard or offgrade, which have been inspected, certified and held, in compliance with committee requirements, at a receiving station of a cooperative bargaining association.

(e) *Off-grade raisins.* (1) Any natural condition raisins tendered to a handler which fail to meet the applicable minimum grade and condition standards may: (i) Be received or acquired by the handler for disposition, without further inspection, in eligible non-normal outlets; (ii) be returned unstemmed to the person tendering the raisins; or (iii) be received by the handler for reconditioning. Off-grade raisins received by a handler under any one of the three described categories may be changed to any other of the categories under such rules and procedures as the committee, with the approval of the Secretary, shall establish. No handler shall ship or otherwise dispose of off-grade raisins which he does not return to the tenderer, transfer to another handler as provided in paragraph (e)(2) of this section, or recondition so that they at least meet the minimum standards prescribed in or pursuant to this amended subpart, except into eligible non-normal outlets.

(2) Off-grade raisins may be transferred from the plant of the handler where received to another plant of his or to that of another handler within the State of California under such rules and procedures as the committee, with the approval of the Secretary, shall establish to safeguard the objectives of this part.

(3) Each handler shall, while holding any off-grade raisins, store them separate and apart from other raisins and the off-grade raisins shall be stored in accordance with disposition and reconditioning categories. The committee with the approval of the Secretary may prescribe rules and procedures for the storage of the raisins.

(4) If the handler is to acquire the raisins after they are reconditioned, his obligation with respect to such raisins shall be based on the weight of the raisins (if stemmed, adjusted to natural condition weight) after they have been reconditioned. If, after such reconditioning, such raisins meet the minimum standards but are no longer natural condition raisins, any handler who acquires such raisins shall meet his reserve tonnage obligations from natural condition standard raisins acquired by him.

(5) The committee shall establish, with the approval of the Secretary, such additional rules and procedures as may be necessary to insure adequate control of off-grade raisins, including, but not limited to, the reconditioning of off-grade raisins, the disposition and use of unsuccessfully reconditioned raisins, and the disposition and use of residual matter from reconditioning operations.

(f) *Blending.* No handler shall blend raisins except: (1) Incidental to reconditioning raisins as permitted under rules and procedures established by

the committee, with the approval of the Secretary; (2) blending standard raisins with standard raisins; or (3) blending raisins which meet the minimum grade standards for packed raisins with other raisins which meet such standards.

[25 FR 12813, Dec. 14, 1960, as amended at 29 FR 9483, July 11, 1964; 32 FR 12161, Aug. 24, 1967; 32 FR 18086, Dec. 19, 1967; 42 FR 37201, July 20, 1977]

§ 989.59 Regulation of the handling of raisins subsequent to their acquisition by handlers.

(a) *Regulation.* Unless otherwise provided in this part, no handler shall: (1) Ship or otherwise make final disposition of natural condition raisins unless they at least meet the effective and applicable minimum grade and condition standards for natural condition raisins; or (2) ship or otherwise make final disposition of packed raisins unless they at least meet such minimum grade standards established by the committee, with the approval of the Secretary, in applicable rules and regulations or as later changed or prescribed pursuant to the provisions of paragraph (b) of this section: *Provided,* That nothing contained in this paragraph shall prohibit the shipment or final disposition of any raisins of a particular varietal type for which minimum standards are not applicable or then in effect pursuant to this part. *And provided further,* That a handler may grind raisins, which do not meet the minimum grade standards for packed raisins because of mechanical damage or sugaring, into a raisin paste.

(b) The committee may recommend changes in the minimum grade standards for packed raisins of any varietal type and may recommend to the Secretary that minimum grade standards for any varietal type be added or deleted. The committee shall submit with its recommendation all data and information upon which it acted in making its recommendation, and such other information as the Secretary may request. The Secretary shall approve any such change if he finds, upon the basis of data submitted to him by the committee or from other pertinent information available to him, that to do so would tend to effectuate the declared policy of the act.

(c) *Publicity and notice.* The committee shall give prompt and reasonable notice to producers, dehydrators, handlers, and the cooperative bargaining association(s) of each recommendation submitted by it to the Secretary and of each regulation issued by the Secretary. Notice of such regulation shall be given to all handlers of record by registered or certified mail.

(d) *Inspection and certification.* Unless otherwise provided in this section, each handler shall, at his own expense, before shipping or otherwise making final disposition of raisins, cause and inspection to be made of such raisins to determine whether they meet the then applicable minimum grade and condition standards for natural condition raisins or the then applicable minimum grade standards for packed raisins. Such handler shall obtain a certificate that such raisins meet the aforementioned applicable minimum standards and shall submit or cause to be submitted to the committee a copy of such certificate together with such other documents or records as the committee may require. The certificate shall be issued by the Processed Products Standardization and Inspection Branch of the United States Department of Agriculture, unless the committee determines, and the Secretary concurs in such determination, that inspection by another agency will improve the administration of this amended subpart. Any certificate issued pursuant to this paragraph shall be valid only for such period of time as the committee may specify, with the approval of the Secretary, in appropriate rules and regulations.

(e) *Inter-plant and inter-handler transfers.* Any handler may transfer from his plant to his own or another handler's plant within the State of California any free tonnage raisins without having had such raisins inspected as provided in paragraph (d) of this section. The transferring handler shall transmit promptly to the committee a report of such transfer, except that transfers between plants owned or operated by the same handler need not be reported. Before ship-

ping or otherwise making final disposition of such raisins, the receiving handler shall comply with the requirements of this section.

(f) *Disposition of offgrade raisins, other failing raisins, and raisin residual material in eligible nonnormal outlets.* Any offgrade raisins, except those returned unstemmed to the tenderer or successfully reconditioned, and any raisin residual material which may be received or acquired by a handler or accumulated by a handler from reconditioning raisins or from processing standard raisins and other failing raisins, shall be disposed of or marketed by the handler, without further inspection, in eligible nonnormal outlets: *Provided,* That no packer shall be precluded from recovering raisins from such accumulations or acquisitions: *Provided further,* That whenever the Secretary concludes, on the basis of a recommendation of the committee, that to specify one or more nonnormal outlets as ineligible for any class of such receipts, acquisitions, or accumulations will tend to effectuate the declared policy of the act, he shall specify such ineligible outlets and prohibit the shipment thereto or final disposition therein of such class by handlers as well as the receipt and use thereof by processors: *And provided further,* That no processor who is a distiller shall be precluded from receiving or using for distillation (1) the standard raisins which subsequently fail to meet the said applicable standards, (2) the raisin residual material accumulated from processing standard raisins, or (3) the raisin residual material referable to the standard raisin equivalent recovered in reconditioning; and any handler may ship such raisins and raisin residual material to such processor. The Committee shall establish, with the approval of the Secretary, such rules and procedures as may be necessary to insure adequate control over the off-grade raisins, other failing raisins, and raisin residual material subject to this paragraph. Such rules may include a requirement that the disposition and use of all or any class of off-grade raisins, other failing raisins, or raisin residual material be confined to the area. The provisions of this paragraph are not intended to excuse any failure to comply with all applicable food and sanitary rules and regulations of city, county, State, Federal, or other agencies having jurisdiction.

(g) *Exemption of experimental and speciality packs.* The committee may establish, with the approval of the Secretary, rules and procedures providing for the exemption of raisins in experimental and specialty packs from one or more of the requirements of the minimum grade standards of this section, together with the inspection and certification requirements if applicable.

[25 FR 12813, Dec. 14, 1960, as amended at 32 FR 12161, Aug. 24, 1967; 37 FR 19622, Sept. 21, 1972; 42 FR 37202, July 20, 1977]

§ 989.60 Exemption.

(a) Notwithstanding any other provisions of this amended subpart, the committee may establish, with the approval of the Secretary, such rules and procedures as may be necessary to permit the acquisition and disposition of any off-grade or reserve pool raisins, free from any or all regulations, for uses in non-normal outlets.

(b) The committee may establish, with the approval of the Secretary, such rules and procedures as may be necessary to exempt from any or all regulations raisins produced in southern California (i.e., the counties of Riverside, Imperial, San Bernardino, Ventura, Orange, Los Angeles, and San Diego) and disposed of for distillation, livestock feed, or by export in natural condition to Mexico.

(c) The committee may designate such raisins as it deems appropriate for production, processing, and marketing research and development. The period of such designation shall be for not more than five years unless extended by the committee. The volume which may be acquired by all handlers shall not exceed 500 natural condition tons annually for each designated project, unless increased by the Secretary upon a recommendation of the committee. Such designated raisins may be acquired and disposed of free from those regulations specified by the committee. In any crop year, when the total industry acquisitions of the

designated raisins exceed 500 natural condition tons or a larger quantity approved by the Secretary upon a recommendation of the committee, the exemption shall not apply.

[29 FR 9484, July 11, 1964, as amended at 32 FR 18086, Dec. 19, 1967; 37 FR 19623, Sept. 21, 1972; 42 FR 37202, July 20, 1977]

§ 989.61 Above parity situations.

The provisions of this part relating to minimum grade and condition standards and inspection requirements, within the meaning of section 2(3) of the act, and any other provisions pertaining to the administration and enforcement of the order, shall continue in effect irrespective of whether the estimated season average price to producers for raisins is in excess of the parity level specified in section 2(1) of the act.

[42 FR 37202, July 20, 1977]

Trade Practices

§ 989.62 Authorization for prohibition of trade practices.

Whenever the Secretary finds, upon recommendation of the committee or other information, that continuance of certain practices in trade channels would tend to interfere with the achieving of the objectives of this part, he may prohibit handlers from using such practices, for any crop year or portion thereof, in selling raisins in containers exceeding four pounds net weight. The prohibited practices may include:

(a) Any provision within or added to a sales contract, or action or agreement outside such contract, whereby the handler is obligated to reflect declines in market prices of raisins by charging the buyer a subsequent market price in lieu of the sales price specified in the contract.

(b) Any agreement in an undertaking to hold raisins in reserve for possible future delivery to a buyer, or action or agreement outside such undertaking, whereby the handler is obligated to not reflect increases in market prices by charging the buyer a price specified in the agreement.

Prior to any such practices being prohibited in any crop year, the committee shall recommend, for the approval of the Secretary, such rules and procedures and such record keeping requirements as are necessary to administer these prohibitions and obtain compliance therewith.

Volume Regulation

§ 989.65 Free and reserve tonnage.

The standard raisins acquired by handlers which are free tonnage, and any reserve tonnage purchased for free use, may be disposed of by him in any marketing channel, subject to the applicable provisions of this part. A handler's free tonnage of a varietal type of raisin shall be either the free percentage of the standard raisins of the varietal type acquired by him or all of the standard raisins of the varietal type acquired by him if no free percentage is established by the Committee or designated by the Secretary for that varietal type. A handler's reserve tonnage of a varietal type shall be the reserve percentage of the standard raisins of that varietal type acquired by him.

[48 FR 32977, July 20, 1983]

§ 989.66 Reserve tonnage generally.

(a) The standard raisins acquired by a handler which are designated as reserve tonnage and reserve tonnage transferred to a handler by the committee shall be held by him for the account of the committee and subject to the applicable restrictions of this part.

(b)(1) Each handler shall hold in storage all reserve tonnage acquired by him and all reserve tonnage transferred to him by the committee until he has been relieved of such responsibility by the committee either by delivery to the committee or otherwise. Such handler shall store such reserve tonnage raisins in natural condition without addition of moisture and in such manner as will maintain the raisins in the same condition as when he acquired them, except for normal and natural deterioriation and shrinkage, and except for loss through fire, acts of God or other conditions beyond the handler's control.

(2) Reserve tonnage acquired by a handler or transferred to a handler by

the committee shall be stored separate and apart from other raisins to such extent and identified in such manner as the committee shall specify in its rules and procedures with the approval of the Secretary.

(3) Each handler may, under the direction and supervision of the committee, substitute for any reserve tonnage raisins a like quantity of standard raisins of the same varietal type and of the same or more recent year's production. Each such handler shall give the committee reasonable advance notice of his intention to substitute, the exact location of the raisins for which substitution is to be made, and arrange with the committee a mutually satisfactory time for the substitution.

(4) The committee may, after giving reasonable notice, require a handler to deliver to it, or to anyone designated by it, at such handler's warehouse or at such other place as the raisins may be stored, part or all of the reserve tonnage raisins held by him. The committee may require that such delivery consist of natural condition raisins, or it may arrange for such delivery to consist of packed raisins.

(c) Each handler shall, at all times, hold in his possession or under his control reserve tonnage referable to his acquisitions of standard raisins and reserve tonnage transferred to him by the committee, less any quantity of such reserve tonnage released to him by a change of percentages, delivered by him pursuant to instructions of the committee or sold to him by the committee.

(d) Reserve tonnage raisins delivered by any handler to the committee, or to any person designated by it, whether in the form of natural condition raisins or packed raisins shall meet the applicable minimum grade or grade and condition standards, except for normal and natural deterioration. The committee shall have the authority to require, in its discretion and at its expense, such reinspection and certification of reserve pool tonnage raisins as it may deem necessary.

(e) In the event the committee offers to handlers reserve tonnage raisins for contract packing or for sale in export, as provided in § 989.67, each handler shall be given the opportunity to pack or purchase his share of each offer.

(f) Handlers shall be compensated for receiving, storing, fumigating, handling, and inspection of that tonnage of reserve raisins determined by the reserve percentage of a crop year and held by them for the account of the committee, in accordance with a schedule of payments established by the committee and approved by the Secretary. A box rental shall be paid by the committee to producers or handlers for boxes used in storing reserve tonnage raisins beyond the crop year of acquisition in accordance with a rental schedule established by the committee and approved by the Secretary. The handler compensation shall be reviewed annually and shall be paid, as to the amount determined to be earned and unpaid, as soon as practicable after the end of the second quarter of the crop year and quarterly thereafter. Any handler may request the committee, by registered or certified mail, at any time after June 1 of a crop year to remove or relocate reserve tonnage raisins of the current crop year which remain in his possession. At any time during a crop year, a handler may request removal or relocation of reserve tonnage of a prior crop year. In each instance, he may request that the committee provide the necessary containers for any such removal or relocation. When so requested as to current crop year raisins, the committee shall make the removal or relocation, the availability of containers, storage space and time of request permitting, by September 15 of the subsequent crop year, and as to raisins of the prior crop year, within 30 days, supplying the necessary containers if so requested. If the committee removes or relocates reserve raisins of the current crop year pursuant to a handler's request, and such raisins are released to him by September 15 of the subsequent crop year, the handler shall reimburse the committee for any costs incurred by it in such removal or relocation. If any handler requests removal or relocation of reserve raisins, the committee shall immediately give notice thereof to the Secretary.

(g) The committee shall have the authority, in its discretion, to obtain

loans, nonrecourse or otherwise, on any part of the reserve tonnage not subject to release as desirable free tonnage and to pledge or hypothecate the raisins on which such loans are obtained as security therefor: *Provided*, That in every such case, there shall be included in the loan agreement a provision to the effect that, in case the lender obtains possession or control of such raisins, he will dispose of them in such a manner as will not tend to defeat the objectives of this amended subpart. The net proceeds of any such loan shall be distributed by the committee pursuant to paragraph (h) of this section.

(h) The net proceeds from the disposition of reserve tonnage raisins of any varietal type shall be distributed by the committee to the respective producers, or their successor in interest thereto, on the basis of the volume of their respective contributions to the reserve tonnage of such varietal type. Distribution of the proceeds in connection with the reserve tonnage contributed by a nonprofit cooperative marketing association which has authority to market the raisins of its members and to allocate the proceeds therefrom to such members shall be made to such association. Advance or progress payments may be made by the committee, in conformity with the provisions of this paragraph, as sufficient funds become available.

[32 FR 12161, Aug. 24, 1967, as amended at 37 FR 19623, Sept. 21, 1972; 41 FR 32417, Aug. 3, 1976; 42 FR 37202, July 20, 1977; 48 FR 32977, July 20, 1983]

§ 989.67 Disposal of reserve raisins.

(a) At the time the committee meets to consider free and reserve percentages for a crop year, the committee shall consider the marketing of reserve tonnage raisins for the subsequent 12-month period. The committee shall dispose of all reserve tonnage in such manner as to achieve, as nearly as may be practicable, maximum disposal of such raisins by the time reserve tonnage raisins from the subsequent crop year are available. Any reserve tonnage raisins held unsold by the committee on May 1 of the subsequent crop year shall be physically disposed of promptly in any available outlet not competitive with normal market channels for free tonnage raisins or sales of new crop reserve tonnage raisins in export: *Provided*, That, whenever the Secretary finds, based upon a recommendation of the committee, or on the basis of information otherwise available to him that because of national emergency, crop failure, an insufficient supply of reserve tonnage raisins for export, or other change of economic or marketing conditions, retention of reserve tonnage raisins carried over is warranted, the foregoing requirements as to disposal shall not apply and such raisins may be disposed of in any outlet recommended by the committee and approved by the Secretary.

(b) Reserve tonnage raisins shall be disposed of by the committee: (1) By sale to handlers for sale in specified outlets or for resale to exporters for sale in export outlets; (2) by direct sale to any agency of the U.S. Government for noncompetitive use; (3) by direct sale to foreign government agencies or foreign importers in any country not listed pursuant to paragraph (c) of this section or where the procurement of raisins is so regulated as to preclude purchases from domestic handlers; (4) by gift; and (5) by any other means consistent with the provisions of this section, and in outlets noncompetitive with those for free tonnage raisins.

(c) The committee shall sell reserve raisins to handlers for export sale to countries on a list established by the Secretary, on the basis of the recommendation of the committee or from other available information. The list of countries shall be reviewed by the committee annually when it reviews matters relating to the free tonnage, and shall recommend any changes in the list to the Secretary for approval. No country may be removed from the list for the purpose of permitting direct sale by the committee unless a finding is made by the committee and approved by the Secretary, that such removal and subsequent direct sale by the committee shall not lead to disruption of sale of reserve tonnage raisins by handlers in other countries on the list, and that although handlers have been able to offer reserve tonnage raisins at competitive prices to the coun-

try to be so removed, there remains an unfilled demand in such country which has not been supplied by handlers and which could be supplied by the committee at the same prices by means of direct sale.

(d)(1) Reserve tonnage raisins shall be sold to handlers at prices and in a manner intended to maximum producer returns and achieve maximum disposition of such raisins by the time reserve tonnage raisins from the subsequent crop year are available. The committee may pay the cost of transporting reserve tonnage from one handler to another and in the event a handler has more than one plant, the committee may pay the cost of transporting reserve tonnage to the handler's plant of its choice. In each offer or reoffer of reserve tonnage raisins for export, the committee may include a quantity of raisins not to exceed 2 percent of the total tonnage offered in such offer or reoffer, which it may sell to handlers whose regular allocation provides insufficient tonnage to fill a containerized freight shipping container: *Provided*, That such sale may be made only when the remaining portion of a handler's regular allocation will fill at least 50 percent of such container and shall be made to a handler only one time in each offer or reoffer of reserve tonnage raisins. No offer or reoffer shall be made until 5 days (exclusive of Saturdays, Sundays, and holidays) have elapsed from the time it files with the Secretary complete information as to varietal type, quantity, and price involved in such offer or reoffer, and the Secretary may disapprove the offer or reoffer or any term thereof: *Provided*, That at any time prior to the expiration of the 5-day period, the offer or reoffer may be made to handlers upon the committee receiving from the Secretary notice that he does not disapprove the making of the offer or reoffer. Subject to the same conditions as are set forth in the preceding sentence with respect to the making of such offer or reoffer, the committee may withdraw an offer or reoffer to sell reserve tonnage raisins to handlers or may extend the offer or reoffer period but not when such extension would deprive one or more handlers of an opportunity to purchase raisins.

(2) Except for the final offer of the reserve tonnage from a crop year, an offer of reserve tonnage raisins for export shall provide for a specific tonnage. Each handler's share of the reserve tonnage offered prior to November 1 of any crop year shall be determined as the same proportion of the quantity offered that the free tonnage raisins acquired by him during the preceding crop year is of the free tonnage raisins acquired by all handlers during the preceding crop year who remain handlers. If reserve tonnage raisins have been removed by the committee from a handler's premises pursuant to § 989.66(f), such handler's allocation of reserve pool offers subsequent to such removal and prior to November 1 of the following crop year shall be reduced by the percentage such removed reserve tonnage is of the total reserve tonnage acquired by such handler in the crop year. Subsequent to October 31, each handler's share shall be determined as the same proportion of the quantity offered that the free tonnage raisins acquired by the handler during the then current crop year is of the total free tonnage raisins acquired by all handlers during the then current crop year. With respect to any offer other than the initial offer, each handler's share of the total quantity offered as of that date (the then current offer plus all prior offers of that crop year) shall first be determined by the appropriate formula. His share of the current offer shall then be determined by subtracting from his share of the total quantity offered, the total of his share of prior offers from the beginning of the crop year. If any handler did not acquire raisins during the preceding crop year, the basis for his share of any quantity of reserve tonnage raisins offered prior to November 1 shall be his acquisitions of free tonnage raisins during the then current crop year. The current free tonnage acquisitions of all such new handler shall, for the purposes of determining the shares of all handlers prior to November 1, be added to the total acquisitions of free tonnage raisins during the preceding

crop year of all handlers in business at the time the offer is made.

(3) With respect to any offer of reserve tonnage for sale to handlers for resale in export, the committee may provide that any such tonnage unpurchased at the end of the share reservation period will be reoffered to handlers without regard to shares and that approval for handlers' applications for purchase may be made in the same order in which the applications are received by the committee. Such reoffer may be made by the committee at the time it makes a regular offer of reserve tonnage, at any time during the period a regular offer is in effect, or within a reasonable time after a regular offer has expired.

(4) The final offer of the reserve tonnage from a crop year may be offered to handlers without regard to shares and approval of handlers' applications for purchase may be made in the same order in which the applications are received by the committee.

(5) Whenever a handler's share or allocation pursuant to this paragraph is less than or exceeds his holdings of reserve tonnage by a minor quantity, the committee may adjust the handler's share or allocation so as to avoid the cost of the physical transfer. The maximum quantity by which a handler's share or allocation may be so allocated shall be prescribed in rules and procedures which the committee shall establish with the approval of the Secretary.

(e) The committee may sell reserve tonnage raisins as provided in paragraph (b)(3) of this section only when such country is not included in the list of specified countries established pursuant to paragraph (c) of this section and may sell reserve tonnage raisins to foreign government agencies of foreign importers in any country removed from such list. No agreement to sell reserve tonnage raisins shall be entered into by the committee until 5 days (exclusive of Saturdays, Sundays, and holidays) have elapsed from the time it files with the Secretary complete information as to varietal type, quantity, price and foreign country involved in any such proposed sale, and the Secretary may disapprove such sale or any term thereof: *Provided*, That, at any time prior to the expiration of the 5-day period, the sale may be made upon the committee receiving from the Secretary notice that he does not disapprove the making of the sale.

(f) Whenever the committee concludes that the orderly disposition of reserve tonnage would be promoted by the committee replacing any portion or all of handlers' export shipments of free tonnage raisins, to other than free tonnage outlets, made prior to the committee's first offer to sell reserve tonnage, it may do so and may specify such requirements and conditions as are necessary to carry out the replacement consistent with the objectives of this amended subpart. The committee may establish a price for such replacement tonnage which is higher, the same as, or lower than that for reserve tonnage in the first offer of the crop year. Any such replacement offer by the committee shall be governed by those provisions of paragraph (d)(1) of this section which prescribe prior action by the Secretary on committee offers to sell tonnage to handlers.

(g) The committee may refuse to sell reserve tonnage raisins for export: (1) To any handler who is in default on any previous purchase of reserve tonnage raisins from the committee; (2) to any handler currently not in compliance with the provisions of a sales agreement covering reserve tonnage raisins, executed by such handler with the committee; or (3) to any handler who signifies an intention to sell reserve tonnage to or through any person who has previously failed to complete a sale of reserve tonnage raisins to a foreign buyer and such raisins remain to be exported and remain unsold to any foreign buyer in an eligible export market.

(h) Each packer's share of an offer of reserve tonnage raisins for contract packing shall be determined as the same proportion that the reserve tonnage raisins acquired by him is of the reserve tonnage raisins acquired by all packers. In the event that any packer fails to contract for packing any or all of his share of any offer, the remaining portion thereof shall be reoffered by the committee to all packers who contracted for packing all of their respective shares, in proportion to their

respective acquisitions: *Provided*, That, if such amount which packers fail to contract for packing does not exceed 250 tons, or if it is necessary to deviate from the foregoing in order to meet terms and conditions of shipment, the committee may, in its discretion, allocate such reserve tonnage raisins among packers as it deems appropriate, but the shares of packers in subsequent offers or reoffers shall be adjusted accordingly.

(i) In the event the committee determines that the applicable procedures as specified in paragraphs (d) and (h) of this section will not provide an allocation for handlers which is suitable for a particular situation, the committee, with the approval of the Secretary, may establish such modifications of procedures, consistent with § 989.66(e), as will facilitate the disposition of reserve tonnage through the handlers.

(j) The committee shall not sell reserve tonnage raisins of any varietal type to handlers to provide them with raisins to sell as free tonnage, other than as provided in § 989.54, unless it files with the Secretary complete information and receives from the Secretary notice that he does not disapprove of such sale and that because of: National emergency, crop failure; change of economic or marketing conditions; free tonnage shipments during the then current crop year exceeding shipments of a comparable period of the prior crop year by more than 5 percent: *Provided*, That, such sale of reserve tonnage shall be limited to the quantity exceeding 105 percent of shipments for the first 10 months of the prior crop year; and/or an inadequate carryover, the free tonnage outlets cannot be reasonably well supplied by the tonnage released to the industry as a whole by the committee's marketing policy for that varietal type. Any quantities of reserve raisins offered to handlers for free use, except as provided in § 989.54(g), may be offered to them on the basis of handler shipments or acquisitions in the same manner as in paragraph (j)(1) of this section. If offered on the basis of acquisitions, shares shall be determined pursuant to paragraph (d)(2) of this section. If offered on the basis of shipments, the same formula shall be used, except that shipments shall be used as the basis instead of acquisitions in computing handlers' shares. However, such raisins shall not be sold at a price below that which the committee concludes reflects the average price received by producers for free tonnage of the same varietal type purchased by handlers during the current crop year up to the time of any offer for sale of reserve tonnage by the committee, to which shall be added the costs to the equity holders incurred by the committee on account of receiving, inspecting, storing, fumigating, insuring, and holding of said raisins, and including costs of taxes and interest: *Provided*, That, where the outlook for the next crop year or other factors have caused a downward trend in the prices received by producers for free tonnage raisins or in the prices received by handlers for free tonnage packed raisins, reserve tonnage may be sold to handlers at the currently prevailing or the approximate computed field price for free tonnage raisins, as determined by the committee. The committee may sell reserve tonnage raisins of any varietal type to any handler to provide him with raisins to sell as free tonnage if such handler has lost all or part of his free tonnage because of fire or other disaster beyond his control subject to the applicable provisions of this paragraph and in an amount equal to such tonnage so lost.

[32 FR 12162, Aug. 24, 1967, as amended at 37 FR 19623, Sept. 21, 1972; 41 FR 32417, Aug. 3, 1976; 42 FR 37202, July 20, 1977; 48 FR 32978, July 20, 1983]

EFFECTIVE DATE NOTE: At 50 FR 18632, May 2, 1985, the penultimate sentence in § 989.67(j) was suspended through July 31, 1985.

§ 989.70 Storage of raisins held on memorandum receipt and of packer-owned tonnage.

All raisins stored by a handler for another person on memorandum or warehouse receipt, or raisins produced and stored by a handler, shall be stored separate and apart from other raisins and shall be clearly marked or tagged as raisins stored on memoran-

dum or warehouse receipt or as raisins produced by the handler but not acquired by him in his capacity as a handler.

§ 989.71 Disposition of unsold reserve tonnage in above parity situations.

In the event that the Secretary should find, during a crop year when reserve tonnage percentages have been designated and are in effect pursuant to this part, that the estimated season average price for raisins for that crop year will be in excess of the price level contemplated by the provisions of section 2(1) of the act, he shall issue an order providing for the orderly disposition of the unsold reserve tonnage then on hand, in such outlets, at such times, and in accordance with such terms and conditions, as he may determine to be appropriate in the circumstances. In determining the liquidation procedures and terms, the Secretary shall give consideration to the data and recommendations, if any, which may be submitted by the committee.

[32 FR 12164, Aug. 24, 1967]

§ 989.72 Exemption of educational institutions.

The committee may exempt, wholly or in part, from the volume regulation provisions of this part, that volume of raisins received or acquired by public or private educational agencies or institutions incidental to or in connection with teaching, experimental, or research activities.

Reports and Records

§ 989.73 Reports.

(a) *Inventory reports.* Each handler shall, upon request of the committee, file promptly with the committee a certified report, showing such information as the committee shall specify with respect to any raisins which were held by him on a date designated by the committee, which information as specified may include, but not be limited to: (1) The quantity of any raisins so held, segregated as to varietal type, natural condition, packed, standard quality or off-grade quality; and (2) the locations of the raisins.

(b) *Acquisition reports.* Each handler shall submit to the committee in accordance with such rules and procedures as are prescribed by the committee, with the approval of the Secretary, certified reports, for such periods as the committee may require, with respect to his acquisitions of each varietal type of raisins during the particular period covered by such report, which report shall include, but not be limited to: (1) The total quantity of standard raisins acquired; (2) the quantity of reserve tonnage referable to his acquisitions of standard raisins; (3) the locations of such reserve tonnages; (4) the total quantity of off-grade raisins acquired pursuant to § 989.58(e)(1)(i), and (5) cumulative totals of such acquisitions from the beginning of the then current crop year to and including the end of the period for which the report is made. Upon written application made to the committee, a handler may be relieved of submitting such reports after completing his packing operations for the season. Upon request of the committee, each handler shall furnish to the committee, in such manner and at such times as it may require, the name and address of each person from whom he acquired raisins and the quantity of each varietal type of raisins acquired from each such person.

(c) Each handler shall file such reports of creditable promotion including paid advertising as recommended by the Committee and approved by the Secretary.

(d) *Other reports.* Upon the request of the committee, with the approval of the Secretary, each handler shall furnish to the committee such other information as may be necessary to enable it to exercise its powers and perform its duties under this amended part.

[25 FR 12813, Dec. 14, 1960, as amended at 32 FR 12164, Aug. 24, 1967; 32 FR 18086, Dec. 19, 1967; 48 FR 32978, July 20, 1983]

§ 989.75 Confidential information.

All reports and records furnished or submitted by a handler to the committee shall be received by, and at all times kept under the custody or control of, one or more employees of the committee, who shall disclose to no person, except the Secretary upon re-

quest therefor, data or information obtained or extracted therefrom which would constitute a trade secret or the disclosure of which might affect the trade position, financial condition, or business operations of the particular handler from whom received: *Provided*, That the committee may require such an employee to disclose to it, or to any person designated by it or by the Secretary, information and data of a general nature, compilations of data affecting handlers as a group, and any data affecting one or more handlers, so long as the identity of the individual handlers involved is not disclosed.

§ 989.76 Records.

Each handler shall maintain such records of all raisins received, and of all raisins acquired, by him as prescribed by the committee. Such records shall include, but not be limited to, the quantity of raisins of each varietal type acquired from each person and the name and address of each such person, total acquisitions, total sales, and total other dispositon of each varietal type which he handles, and each handler shall maintain such records for at least two years after the termination of the crop year in which the transactions occurred. The Committee, with the approval of the Secretary, may prescribe rules and regulations to include under this section handler records that detail promotion and advertising activities which the Committee may need to perform its functions under § 989.53.

[25 FR 12813, Dec. 14, 1960, as amended at 48 FR 32978, July 20, 1983]

§ 989.77 Verification of reports and records.

For the purpose of checking and verifying reports filed by handlers and records prescribed in or pursuant to this amended subpart, the committee, through its duly authorized representatives, shall have access to any handler's premises during regular business hours and shall be permitted at any such times to inspect such premises and any raisins held by such handler, and any and all records of the handler with respect to the holding or disposition of raisins by him and promotion and advertising activities conducted by handlers under § 989.53. Each handler shall furnish all labor and equipment necessary to make such inspections. Each handler shall store raisins in a manner which will facilitate inspection, and shall maintain storage records which will permit accurate identification of raisins held by him or theretofore disposed of. Insofar as is practicable and consistent with the carrying out of the provisions of this amended subpart, all data and information obtained or received through checking and verification of reports and records shall be treated as confidential information.

[25 FR 12813, Dec. 14, 1960, as amended at 48 FR 32978, July 20, 1983]

EXPENSES AND ASSESSMENTS

§ 989.79 Expenses.

The committee is authorized to incur such expenses (other than those specified in § 989.82) as the Secretary finds are reasonable and likely to be incurred by it during each crop year, for the maintenance and functioning of the committee and for such purposes as he may, pursuant to this subpart, determine to be appropriate. The funds to cover such expenses shall be obtained levying assessments as provided in § 989.80. The committee shall file with the Secretary for each crop year a proposed budget of these expenses and a proposal as to the assessment rate to be fixed pursuant to § 989.80, together with a report thereon. Such filing shall be not later than October 5 of the crop year, but this date may be extended by the committee not more than 5 days if warranted by a late crop. Also it shall file at the same time a proposed budget of the expenses likely to be incurred during the crop year in connection with reserve raisins held for the account of the committee, exclusive of the receiving, storing, fumigating, and handling expenses which are covered by a schedule of payments to handlers effective pursuant to § 989.66(f) or any rules and procedures established by the committee, and exclusive of any expenses it may incur in connection with the dispositon of such raisins and which are unknown at the time. The

said report shall also cover this proposed budget.

[32 FR 12165, Aug. 24, 1967, as amended at 41 FR 32417, Aug. 3, 1976; 42 FR 37202, July 20, 1977]

§ 989.80 Assessments.

(a) Each handler shall, with respect to free tonnage acquired by him, and any reserve tonnage released or sold to him for use in free tonnage outlets, pay to the committee, upon demand, his pro rata share of the expenses (exclusive of expenses for receiving, fumigating, handling, holding or disposing of reserve pool tonnage) which the Secretary finds will be incurred, as aforesaid, by the committee during each crop year less any amounts credited pursuant to § 989.53. Such handler's pro rata share of such expenses shall be equal to the ratio between the total free tonnage acquired by such handler plus any reserve tonnage released or sold to him for use as free tonnage, during the applicable crop year and the total free tonnage acquired by all handlers plus all reserve tonnage released or sold to all handlers for use as free tonnage, during the same crop year: *Provided,* That (1) in computing the total free tonnage acquired by a particular handler, there shall be excluded all standard raisins (recovered by the reconditioning of offgrade raisins) acquired by the handler and which comprise the assessable portion of another handler pursuant to paragraph (b) of this section, and (2) the computation of the total free tonnage acquired by all handlers shall not be similarly reduced.

(b) Each handler who reconditions offgrade raisins but does not acquire the standard raisins recovered therefrom shall, with respect to his assessable portion of all such standard raisins, pay to the committee, upon demand, his pro rata share of the expenses which the Secretary finds will be incurred by the committee each crop year. Such handler's pro rata share of such expenses shall be equal to the ratio between the handler's assessable portion (which shall be a quantity equal to the free tonnage portions of such handler's standard raisins which are acquired by some other handler or handlers) during the applicable crop year and the total free tonnage acquired by all handlers, plus all reserve tonnage released or sold to all handlers for use as free tonnage, during the same crop year.

(c) During any crop year or any portion of a crop year for which volume percentages are not effective for a varietal type, all standard raisins of that varietal type acquired by handlers during such period shall be free tonnage for purposes of levying assessments pursuant to this section. The Secretary shall fix the rate of assessment to be paid by all handlers on the basis of a specified rate per ton. At any time during or after a crop year, the Secretary may increase the rate of assessment to obtain sufficient funds to cover any later finding by the Secretary relative to the expenses of the committee. Each handler shall pay such additional assessment to the committee upon demand. In order to provide funds to carry out the functions of the committee, the committee may accept advance payments from any handler to be credited toward such assessments as may be levied pursuant to this section against such handler during the crop year. The payment of assessments for the maintenance and functioning of the committee, and for such purposes as the Secretary may pursuant to this subpart determine to be appropriate, may be required under this part throughout the period it is in effect, irrespective of whether particular provisions thereof are suspended or become inoperative.

(d) Each handler shall, with respect to administrative assessments not paid within 30 calendar days of the date of the Committee's invoice, pay to the Committee interest on the unpaid assessment at the rate of the prime rate established by the bank in which the Committee has its administrative assessment funds deposited, on the day that the administrative assessment becomes delinquent plus 2 percent; and further, that such rate of interest be added to the bill monthly until the delinquent handler's assessment plus applicable interest has been paid: *Provided,* That the Committee may, with the approval of the Secretary, modify the interest rate applicable to delinquent handler's assessment through the es-

tablishment of applicable rules and regulations.

[29 FR 9484, July 11, 1964, as amended at 32 FR 12165, Aug. 24, 1967; 42 FR 37202, July 20, 1977; 48 FR 32978, July 20, 1983]

§ 989.81 Accounting.

(a) If, at the end of the crop year, the assessments collected for such crop year exceed the expenses incurred with respect to such crop year, each handler's share of such excess shall be credited to him against, and may be used for, the operations of the following crop year, unless such handler demands payment thereof, in which case his share shall be paid to him.

(b) The committee may, with the approval of the Secretary, maintain in its own name or in the name of its members, a suit against any handler for the collection of such handler's pro rata share of the expenses.

§ 989.82 Expenses of reserve raisin operations.

The committee is authorized to incur such expenses as are reasonable and are necessary in discharging its obligations, pursuant to this part, with respect to the receiving, fumigating, handling, holding, or disposing of any quantity of reserve pool raisins held for the account of the committee. The committee is authorized to pay any taxes assessed against raisins held by or for the account of the committee on March 1, or such assessment date as later changed and then in effect, in the reserve pool established pursuant to this subpart: *Provided,* That any equity holder may pay his taxes upon giving notice to the committee on or before May 1 of each year of his intention to do so. All pool expenses shall be deducted from the proceeds obtained by the committee from the sale or other disposal of such reserve raisins held for the account of the committee.

[32 FR 12165, Aug. 24, 1967, as amended at 37 FR 19624, Sept. 21, 1972; 42 FR 37202, July 20, 1977]

§ 989.83 Funds.

All funds received by the committee pursuant to the provisions of this part, shall be used solely for the purposes authorized, and shall be accounted for in the manner provided, in this part. The Secretary may, at any time, require the committee and its members and alternate members to account for all receipts and disbursements.

MISCELLANEOUS PROVISIONS

§ 989.84 Disposition limitation.

No handler shall dispose of free or reserve tonnage raisins, offgrade raisins, or other failing raisins, except in accordance with the provisions of this subpart or pursuant to regulations issued by the committee.

[32 FR 12165, Aug. 24, 1967, as amended at 42 FR 37202, July 20, 1977]

§ 989.85 Personal liability.

No member or alternate member of the committee or any employee or agent thereof shall be held personally responsible, either individually or jointly with others, in any way whatsoever, to any handler or any person, for errors in judgment, mistakes, or other acts either of commission or omission, as such member, alternate member, employee, or agent, except for acts of dishonesty.

[41 FR 32417, Aug. 3, 1976, as amended at 48 FR 32978, July 20, 1983]

§ 989.86 Separability.

If any provision of this amended subpart is declared invalid, or the applicability thereof to any person, circumstance, or thing is held invalid, the validity of the remainder of this amended subpart or the applicability thereof to any other person, circumstance, or thing shall not be affected thereby.

§ 989.87 Derogation.

Nothing contained in this amended subpart is, or shall be construed to be, in derogation or in modification of the rights of the Secretary or of the United States to exercise any powers granted by the act or otherwise, or, in accordance with such powers, to act in the premises whenever such action is deemed advisable.

§ 989.88 Duration of immunities.

The benefits, privileges, and immunities conferred upon any person by virtue of this amended subpart shall cease upon the termination of this amended subpart, except with respect to acts done under and during the existence of this subpart.

§ 989.89 Agents.

The Secretary may, by a designation in writing, name any person, including any officer or employee of the United States Government, or name any bureau or division in the United States Department of Agriculture, to act as his agent or representative in connection with any of the provisions of this amended subpart.

§ 989.90 Effective time.

The provisions of this amended subpart, as well as any amendments to this amended subpart shall become effective at such time as the Secretary may declare, and shall continue in force until terminated, or during suspension, in one of the ways specified in § 989.91.

§ 989.91 Suspension or termination.

(a) The Secretary may, at any time, terminate the provisions of this amended subpart by giving at least one day's notice by means of a press release or in any other manner which he may determine.

(b) The Secretary shall terminate or suspend the operation of any or all of the provisions of this amended subpart, whenever he finds that such provisions do not tend to effectuate the declared policy of the act.

(c) The Secretary shall terminate the provisions of this amended subpart at the end of any crop year whenever he finds that such termination is favored by a majority of the producers who, during a representative period determined by the Secretary, have been engaged in the production for market of grapes used in the production of raisins in the State of California: *Provided*, That such majority have, during such representative period, produced for market more than 50 percent of the volume of such grapes produced for market within said State; but such termination shall be effective only if announced before July 31 of the then current crop year.

(d) The provisions of this amended subpart shall, in any event, terminate whenever the provisions of the act authorizing them cease to be in effect.

[25 FR 12813, Dec. 14, 1960, as amended at 41 FR 32417, Aug. 3, 1976]

§ 989.92 Proceedings after termination.

(a) Upon the termination of the provisions of this amended subpart, the members of the committee then functioning shall continue as joint trustees for the purpose of liquidating the affairs of the committee, of all funds and property then in the possession or under the control of the committee, including claims for any funds unpaid or property not delivered at the time of such termination. Action by said trusteeship shall require the concurrence of a majority of the said trustees.

(b) Said trustees shall continue in such capacity until discharged by the Secretary; shall, from time to time, account for all receipts and disbursements and deliver all property on hand, together with all books and records of the committee and the joint trustees, to such person as the Secretary may direct; and shall, upon the request of the Secretary, execute such assignments or other instruments necessary or appropriate to vest in such person full title and right to all of the funds, property, and claims vested in the committee or the joint trustees pursuant to this subpart.

(c) Any person to whom funds, property or claims have been transferred or delivered by the committee or its members, pursuant to this section, shall be subject to the same obligations imposed upon the members of the said committee and upon said joint trustees.

§ 989.93 Effect of termination or amendment.

Unless otherwise expressly provided by the Secretary, the termination of this amended subpart or any regulation issued pursuant to this amended subpart, or the issuance of any amendment to either thereof, shall not (a) affect or waive any right, duty, obliga-

tion, or liability which shall have arisen or which may thereafter arise in connection with any provision of this amended subpart or any regulation issued under this amended subpart, (b) release or extinguish any violation of this amended subpart, or of any regulation issued under this amended subpart, or (c) affect or impair any rights or remedies of the Secretary or of any other person, with respect to any such violation.

§ 989.94 Amendments.

Amendments to this amended subpart may be proposed from time to time, by any person or by the committee.

§ 989.95 Right of Secretary.

The members of the committee (including alternates and successors) and any agent or employee appointed or employed by the committee, shall be subject to removal or suspension by the Secretary, in his discretion, at any time. Every decision, determination, or other act of the committee shall be subject to the continuing right of the Secretary to disapprove of the same at any time. Upon such disapproval, the disapproved action of the committee shall be deemed null and void.

[41 FR 32417, Aug. 3, 1976, as amended at 48 FR 32978, July 20, 1983]

Subpart—Administrative Rules and Regulations

SOURCE: 27 FR 3112, Mar. 31, 1962, unless otherwise noted.

DEFINITIONS

§ 989.102 Inspection service.

"Inspection service" means the Processed Products Branch, Fruit and Vegetable Division, Agricultural Marketing Service of the United States Department of Agriculture.

[49 FR 18730, May 2, 1984]

§ 989.104 Lot.

(a) *Natural condition raisins*—(1) *Basic definition.* For the purpose of incoming and outgoing inspection of natural condition raisins, "lot" means, except as otherwise provided in this paragraph, the quantity of such raisins of the same varietal type or of differing varietal types when commingled within their containers (including sweat and picking boxes and bins), which does not exceed a car, truck, or truck-trailer load, and which is submitted for inspection at one time and in the same place.

(2) *Separation of large units.* If a quantity of raisins in excess of a car, truck, or truck-trailer load is submitted for inspection, the total quantity may, at the discretion of the inspector, be separated into such readily identifiable portions, either prior to or in the course of inspection, as can be conveniently and properly inspected, and each such portion shall constitute a lot.

(3) *Resubmission after reconditioning.* Raisins which are submitted for inspection after reconditioning (such as sorting or drying) and whose original lot identity is no longer applicable, shall be a new lot.

(4) *Meeting and failing portions.* Where a portion of a quantity of raisins submitted for inspection meets the minimum grade and condition standards and has been separated from the remainder of the raisins failing to meet such standards:

(i) The meeting portion shall be one lot; and

(ii) The remainder shall be one or more lots as necessary to cause each lot to contain either (*a*) a single defect in excess of tolerance or (*b*) two or more of the same defects in excess of tolerance occurring together within each of the individual containers.

(5) *Entire quantity failing.* Where the entire quantity of raisins submitted for inspection fails to meet such standards, then, whether such quantity shall be one or more lots shall be determined in the same manner as for the failing remainder referred to in paragraph (a)(4) of this section.

(6) *Special condition.* Notwithstanding other provisions of this section, any quantity of raisins failing to meet such standards and which are not to be reconditioned may be a single lot.

(b) *Packed raisins.* For the purpose of outgoing inspection of packed raisins, lot means: (1) For in-line inspection (i.e., where samples are drawn

from a flow of raisins prior to packaging), the aggregate quantity of raisins of the same varietal type, subtype, or size (or in their mixed form), processed in any continuous production of one calendar day and packaged in one size and style of package but excluding those rejected by inspection; and (2) for floor inspection (i.e., where samples are drawn from containers of raisins), the aggregate quantity of such raisins in like containers but not necessarily processed in one continuous production or during one calendar day, identifiable and offered for inspection as a lot.

§ 989.105 Inspection point.

"Inspection point" means any plant or receiving station of a handler, or any other place where raisins are received by a handler, and which is so designated by the Committee. The inspection point(s) of the handler shall include any area(s) in which he receives grapes or raisins for dehydration unless he keeps his raisin dehydration business separate, physically and by records, from his business of handling raisins.

[31 FR 16305, Dec. 21, 1966]

§ 989.106 Ship.

"Ship" means the physical movement of raisins other than to storage for the handler's account within the general locality of the packing plant.

§ 989.107 Inspection certificate.

"Inspection certificate" means any written certification, finding, or attestation as to the quality or condition of any lot or lots issued by an authorized member of the inspection service.

§ 989.110 Varietal types.

Pursuant to § 989.10, specific definitions for each varietal type of raisins contained in that section are as follows:

(a) Natural (sun-dried) Seedless includes all sun-dried seedless raisins that possess characteristics similar to Natural Thompson Seedless raisins which, for the purpose of expediting drying, have not been dipped in or sprayed with water, with or without soda, oil or other chemicals prior to or during the drying process.

(b) Dipped Seedless includes all raisins produced by artificial dehydration of seedless grapes which, in order to expedite drying, have been dipped in or sprayed with water only after such grapes have been removed from the vine.

(c) Oleate and Related Seedless includes all raisins produced by sun-drying or artificial dehydration of seedless grapes which, in order to expedite drying, are dipped in or sprayed with water with soda, oil, Ethyl Oleate, Methyl Oleate or any other chemicals either while such grapes are on the vine or after they have been removed from the vine.

(d) Golden Seedless includes all seedless raisins whose color generally varies from golden yellow to dark amber.

(e) Muscats (including other raisins with seeds) include all raisins which usually contain seeds and possess characteristics similar to Muscat raisins.

(f) Sultana includes all raisins which usually contain an undeveloped (vestigial) seed and possess characteristics similar to Sultana raisins.

(g) Zante Currant includes all raisins that possess characteristics similar to those produced from Black Corinth or White Corinth grapes.

(h) Monukka includes all raisins that possess characteristics similar to those produced from Monukka and Black Imperial grapes.

[49 FR 18730, May 2, 1984]

§ 989.111 Independent producer and small cooperative producer.

(a) "Independent producer" means any producer who is not a member of a cooperative bargaining association or a cooperative marketing association, nor has sold for cash to a cooperative marketing association.

(b) "Small cooperative producer" means any producer who is a member of a cooperative marketing association which acquired less than 10 percent of total raisin acquisitions during the crop year preceding the year in which nominations are held.

[49 FR 18730, May 2, 1984]

§ 989.115 Independent handler, major cooperative marketing association handler, and small cooperative marketing association handler.

(a) "Independent handler" means any handler who is not a cooperative marketing association of producers.

(b) "Major cooperative marketing association handler" means any handler who is a cooperative marketing association of producers which acquired not less than 10 percent of the total raisin acquisitions during the crop year preceding nominations.

(c) "Small cooperative marketing association handler" means any handler who is a cooperative marketing association of producers which acquired less than 10 percent of the total raisin acquisitions during the crop year preceding nominations.

[49 FR 18730, May 2, 1984]

RAISIN ADMINISTRATIVE COMMITTEE

§ 989.122 Districts for independent and small cooperative producer representation on the Committee.

For the purposes of § 989.26(c) and commencing with the term of office beginning May 1, 1984, independent and small cooperative producer districts are as follows:

(a) District No. 1—All of the counties north of Fresno County.

(b) District No. 2—All of the counties south of Fresno County.

(c) District No. 3—All of Fresno County.

[49 FR 18730, May 2, 1984]

§ 989.126 Representation of the Committee.

(a) To provide independent and small cooperative producers equitable representation throughout the production area commencing with the term of office beginning May 1, 1984, representation shall be apportioned among the three districts specified in § 989.122. Districts 1 and 2 shall each have one producer member, and District 3 shall have the remaining producer members to which independent and small cooperative producers are entitled pursuant to § 989.26(c).

(b) Pursuant to § 989.26(d) and commencing with the term of office beginning May 1, 1984, apportionment of the independent and small cooperative marketing association handlers shall be:

(1) Two members selected from and representing the four handler(s) other than major cooperative marketing association handler(s) who acquired the largest percentage of the total raisin acquisitions during the preceding crop year;

(2) Two members selected from and representing the six handlers other than major cooperative marketing association handler(s) who acquired the next largest percentage of the total raisin acquisitions during the preceding crop year; and

(3) The remaining member(s) selected from and representing all other handlers, including small cooperative marketing association handler(s) and all processors.

[49 FR 18730, May 2, 1984]

§ 989.129 Voting at nomination meetings.

Any person (defined in § 989.3 as an individual, partnership, corporation, association, or any other business unit) who is engaged, in a proprietary capacity, in the production of grapes which are sun-dried or dehydrated by artificial means to produce raisins and who qualifies under the provisions of § 989.29(b)(2) shall be eligible to cast one vote for a nominee for each producer member position and one vote for a nominee for each producer alternate member position on the committee which is to be filled for his district. Such person must be the one who or which: (a) Owns and farms land resulting in his or its ownership of such grapes produced thereon; (b) rents and farms land, resulting in his or its ownership of all or a portion of such grapes produced thereon; or (c) owns land which he or it does not farm and, as rental for such land, obtains the ownership of a portion of such grapes or the raisins. In this connection, a partnership shall be deemed to include two or more persons (including a husband and wife) with respect to land the title to which, or leasehold interest in which, is vested in them as tenants in common, joint tenants, or under community property laws, as

community property. In a landlord-tenant relationship, wherein each of the parties is a producer, each such producer shall be entitled to one vote for a nominee for each producer member position and one vote for each producer alternate member position. Hence, where two persons operate land as landlord and tenant on a share-crop basis, each person is entitled to one vote for each such position to be filled. Where land is leased on a cash rental basis, only the person who is the tenant or cash renter (producer) is entitled to vote. A partnership or corporation, when eligible, is entitled to cast only one vote for a nominee for each producer position to be filled in its district.

[38 FR 10076, Apr. 24, 1973, as amended at 42 FR 52376, Sept. 30, 1977]

§ 989.139 Compensation for attendance of alternates at Committee meetings.

Whenever a member of the Raisin Administrative Committee has reason to believe that he will be unable to attend a Committee meeting and has so notified his alternate or the Committee manager, such notification or a request from the manager shall be held to be a request for the alternate to attend and he shall be reimbursed for reasonable expenses subject to the limitations contained in § 989.39.

[42 FR 52376, Sept. 30, 1977, as amended at 49 FR 18731, May 2, 1984]

Quality Control

§ 989.156 Raisin diversion program.

(a) *Quantity to be diverted.* On or before November 30 of each crop year, the Committee shall announce the quantity of raisins eligible for a raisin diversion program. The quantity eligible for diversion may be announced for any of the following varietal types of raisins: Natural (sundried) Seedless, Muscat (including other raisins with seeds), Sultana, Zante Currant, and Monukka raisins. At the same time, the Committee shall determine and announce to producers, handlers, and the cooperative bargaining association(s) the allowable harvest cost to be applicable to such diversion tonnage. The factors to be reviewed by the Committee in determining allowable harvest costs shall include but not be limited to: Costs for picking, turning, rolling, boxing, paper trays, vineyard terracing, hauling to the handler, and crop insurance.

(b) *Application for diversion certificates.* Any producer desiring to participate in a raisin diversion program shall file with the Committee, by certified mail, prior to December 20 of the crop year, an application on Form RAC-1000, "Application for Raisin Diversion Certificate". Such application shall include at least the following information:

(1) The name, address, and telephone number of the producer;

(2) The location and size of the production unit to be diverted;

(3) The raisin production by varietal type on such production unit during the prior crop year or the last crop year eligible for such diversion;

(4) The handler to whom such raisins were delivered;

(5) A statement identifying whether the applicant will remove the vines in the production unit under the program;

(6) A statement that all persons with an equity interest in the grapes in the production unit to be diverted consent to the filing of the application; and

(7) A statement that the producer agrees to comply with the regulations established for a raisin diversion program.

The producer applicant shall sign the application certifying that the information contained therein is true and correct.

(c) *Handling of applications.* After the Committee receives the producer applications, it shall review them to determine whether all the required information has been provided and appears reliable. Any incomplete application shall be returned to the producer applicant for correction together with a statement of the error or omission in the application. The applicant shall have a reasonable opportunity to correct such application. However, such correction must be received by the Committee on or before January 12.

(d) *Priority of applications and allocation of tonnage.* Those producer applicants indicating that the vines of the producing units will be removed

shall receive priority over other applicants when reserve tonnage under the program is to be allocated. If the production volume in such applications exceeds the amount of diversion tonnage available under the program, a lottery will be held to allocate such diversion tonnage among the applicants. In conducting any lottery under this section, the Committee may group producer applications on a handler by handler basis and separate lotteries will be held for each such group. The diversion tonnage of raisins available for each such group in each lottery may not exceed the percentage of total handler acquisitions acquired by the group's handler during the previous crop year. To the extent diversion tonnage exists after such group lotteries, such remaining diversion tonnage may be allocated by one lottery of all remaining producer applications. If reserve tonnage exists under the program after the allocation of diversion tonnage has been made to all eligible producer applicants who remove vines, all other applications shall be considered. If the production volume in such applications exceeds the amount of reserve raisin tonnage remaining under the program, a lottery will be held to allocate the remaining diversion tonnage in the manner described above.

(e) *Approval of applications.* The Committee shall notify the applicant for diversion, in writing, as to whether or not the application has been approved. If the application is not approved, the notification shall state the reason(s) for disapproving the application.

(f) *Disclosure of information.* The applicant, whose application has been approved, agrees that by participating in the raisin diversion program, the information in the application may be disclosed to the Committee, its representatives, or agents. The Committee, its representatives, or agents may not use this information for any personal use and shall comply with all applicable provisions pertaining to the unauthorized disclosure of such information.

(g) *Compliance.* The applicant, whose application has been approved, authorizes Committee representatives and agents to have access to the production unit in the diversion program during reasonable business hours during the crop year to confirm compliance with the program. Notice will be provided to the applicant of such visits. Committees of not more than five persons shall be established in each district designated by the Committee. Such raisin diversion program committees shall serve as agents of the Committee to aid in assuring producer compliance with the program. These committees may be furnished the approved applications of producers in their district. These committees shall advise the Committee of the progress of the diversion within their district. If these committees have reason to believe that any approved applicant is not complying with the raisin diversion program, they shall notify the Committee prior to any further action. The members of these committees shall serve without compensation, but be allowed their necessary expenses as determined by the Committee.

(h) *Methods of diversion.* An approved applicant shall be required to take the necessary measures to preclude grapes from being produced and harvested on the production unit involved in the program. These measures may include spur pruning the vines, chemically removing the crop before maturity, hand removing and destroying the bunches of grapes before maturity, removing the vines, or any other method which prevents the grapes from maturing and being harvested. An approved applicant must remove the grapes within the production unit designated in their application not later than June 1 of the crop year when a raisin diversion program is implemented. Grafting vines to another varietal type does not constitute removal of the vines under the program. Any raisin producer who does not take the necessary measures to remove the vines or grapes on an approved production unit by June 1, shall not be issued a diversion certificate, may be subject to liquidated damages and interest charges as provided in paragraph (q) of this section, may be subject to an injunctive action under the act, and may be denied the opportunity to participate in future diversion programs.

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(i) *Issuance of certificates.* On or before October 5 of the following crop year, the Committee shall issue diversion certificates to those approved applicants who have removed grapes in accordance with this section. Such certificates shall represent an amount of reserve tonnage raisins equal to the amount of raisins diverted from the production unit(s), or portion(s) thereof, specified in the producer application, or additional quantity granted by the Committee when vines are diverted through vine removal or any other means established by the Committee, as the case may be. If, prior to issuance of a certificate, the Committee is notified by an approved applicant that that applicant's interest in the production unit(s), or portion(s) thereof, involved in the program has been transferred to another person, the Committee may substitute the transferee for the applicant provided the transferee agrees to comply with the provisions of this section.

(j) *Submission of diversion certificates from producer to handlers.* Diversion certificates may be submitted by producers only to handlers. The handler shall pay the producer for the free tonnage applicable to the diversion certificate minus the established harvest cost for the entire tonnage shown on the certificate.

(k) *Redemption of certificates.* Any handler holding diversion certificates may redeem such certificates for reserve pool raisins from the Committee. To redeem a certificate, a handler must present the diversion certificate to the Committee and pay the Committee an amount equal to the established harvest cost plus an amount equal to the payment for receiving, storing, fumigating, handling, and inspecting raisins as specified in § 989.401 for the entire tonnage shown on the certificate. Handlers who acquire diversion certificates from producers shall report acquisitions of such certificates and submit them for redemption in a manner and for the reporting periods provided in § 989.173(b) for the acquisition of raisins acquired from producers. The Committee shall then issue a reserve release entitling the handler to a specified amount of reserve pool raisins for free tonnage use equal to the multiple of the free percentage and entire tonnage shown on the certificate. The Committee shall transfer the appropriate amount of reserve tonnage raisins to satisfy any reserve pool obligation and shall release to the handler the appropriate reserve tonnage for free tonnage use. Upon receipt of the diversion certificate, the Committee shall note on the certificate that it is cancelled. Diversion certificates will only be valid and honored by the Committee if presented to it for redemption on or before February 15 of the crop year for which they were issued.

(l) *Lost, damaged, or destroyed certificates.* The Committee should be notified of any lost, damaged, or destroyed certificates as quickly as possible by a handler or producer so that appropriate measures such as issuing new certificates may be taken.

(m) *Appeals.* If a determination is made by the Committee that a producer has not complied with these regulations and is therefore not entitled to a diversion certificate, such producer may request a hearing before an appeals subcommittee established by the Committee. If the producer disagrees with the subcommittee's decision, the producer may request the Committee to review the subcommittee's decision.

(n) *Voiding certificates.* If, subsequent to a diversion certificate being issued to a producer but before it has been submitted to a handler, the Committee determines that the producer did not comply with these regulations, it shall void the certificate.

(o) *Production unit.* For the purposes of the raisin diversion program, a production unit is a clearly defined geographic area with permanent boundaries (either natural or manmade). In addition, a producer must be able to document to the Committee the previous year's production data for that specific area by means of sales receipts or other delivery or transfer documents which indicate the creditable fruit weight delivered to handlers from that specific area. A new production unit will not be eligible for the raisin diversion program until at least one year's production has been grown and is documented. An existing production unit, transferred to a new or

expanding producer, is eligible for the raisin diversion program as soon as the previous year's production can be properly documented.

(p) *Time limitations.* During the 1984-84 crop year, the Committee may extend any or all of the time deadlines in this section by up to 45 days, as it deems appropriate.

(q) *Liquidated damages and interest charges.* By applying to participate in a raisin diversion program, an applicant agrees that the failure of the approved applicant to timely remove the vines or grapes will cause serious and substantial damage to the program and the raisin industry and that, in consideration of the approval of the application, such applicant will pay liquidated damages and interest to the Committee, in the event of such failure to timely remove vines or grapes. Since it would be difficult, if not impossible, to determine the amount of such liquidated damages, the following amount, which is a fair measure of damages and not a penalty, shall apply:

(1) The amount of the liquidated damages shall be computed by multiplying the tonnage on the approved diversion application (Form RAC-1000) by the harvest cost determined and announced by the Committee.

(2) Each approved applicant shall, with the respect to liquidated damages not paid by July 1, pay to the Committee interest on such unpaid liquidated damages at the rate of the prime rate of the bank in which the Committee has its reserve pool funds deposited, on the day the liquidated damages become delinquent, plus 2 percent, and further such rate of interest shall be added to the unpaid amount, monthly, until the liquidated damages plus applicable interest are paid.

(3) Liquidated damages and interest collected by the Committee pursuant to this subparagraph shall be deposited in the reserve pool fund of the reserve pool applicable to the particular diversion program and be distributed to the equity holders in that pool.

(r) *Notification.* If any changes are made in the terms and conditions of the diversion program after a producer's application has been approved, the Committee will notify the producer of such changes and the producer will be given 10 calendar days to agree to the revised terms, or to withdraw from the program. Failure of the producer to notify the Committee in writing of its intention to withdraw from the program within 10 calendar days from the date of the Committee's notice will constitute agreement to the revised terms and conditions.

(s) *Additional opportunity for vine removal.* (1) The Committee may announce a date later than that provided in § 989.156(b), by which producers, who agree to remove the vines on a production unit, or portion thereof may file an application to participate in a raisin diversion program. The announced date shall be not later than May 1, except this date may be extended 30 days for the 1985 calendar year. The diversion certificates will be issued only for the production units or portions thereof from which the vines are removed. The total tonnage available to such applicants shall not exceed the tonnage determined by deducting the tonnage approved for applications received on or before December 20 from the total tonnage announced as eligible by the Committee for diversion. Applications shall be considered and approved on a first-come, first-served, basis and shall not be given preference over the tonnage approved for applications received on or before December 20. The vines shall be removed from the production units or portion thereof for which such applications are approved not later than June 1, except this date may be extended 30 days for the 1985 calendar year.

(2) Producers who agree to remove the vines pursuant to this paragraph shall notify the Committee in advance of the date when such vines will be removed in order to allow a representative of the Committee to observe and verify such vine removal.

(3) The determination of the tonnage allowed for acreage removed for less than a total production unit would be computed by multiplying the previous year's tonnage produced and verified on the entire unit by the ratio of the acreage removed divided by the acreage contained in the total production unit.

[50 FR 3880, Jan. 29, 1985, as amended at 50 FR 33912, Aug. 22, 1985; 50 FR 50159, Dec. 9, 1985]

§ 989.158 Natural condition raisins.

(a) *Incoming inspection.* (1)(i) The Committee shall, upon request of a handler who complies with the requirements of this part with respect to inspection points, designate as his inspection point any place (including his plant or receiving station) where the handler receives raisins.

(ii) Each handler shall, at his expense, provide at each of his inspection points reasonably safe and adequate facilities for receiving raisins, drawing samples, and efficient inspection of natural condition raisins. At the time of inspection of any lot, the handler shall, at his expense, provide the inspector with any assistance necessary in the inspection of the raisins, including the movement of individual containers. Each handler, other than a processor, shall maintain with the Committee a current written description, defining the boundaries and other pertinent details, of each of his inspection points. In the event the Committee determines that any inspection point, or any modification thereof, does not comply with the definition or the requirements of this part, it shall notify the handler of the changes necessary for compliance. The handler shall make such changes promptly. In the event any of his inspection points is the same as that of another handler or person receiving raisins or grapes in any form, the handler shall maintain his raisins separate and apart from any other raisins.

(iii) The weight of each lot of raisins tendered for receiving, storage, reconditioning, acquisition, or disposition shall be substantiated by an official "State Certificate of Weights and Measures" issued by a public weighmaster, whether located at the inspection point or otherwise, or such other document approved by the Committee which accurately reflects the weight of each lot tendered. The net weight of such raisins for the purposes of this part, shall be determined by deducting the sand tare and box tare from the gross weight of the raisins. The sand tare shall be the weight of the sand and other foreign material removed from the raisins by passing the raisins over a screen (of a type commonly used by the industry for such purpose) having 36 square openings to the square inch, with each opening being one-eighth of an inch square.

(2) No handler, other than a processor, shall receive at points other than at an inspection point, natural condition raisins from a tenderer, either for acquisition, storage, reconditioning, inspection, or for disposition in eligible nonnormal outlets: *Provided,* That this requirement shall not preclude a handler from dehydrating, free from the provisions of this part, at separate dehydrating facilities recognized in § 989.105 and located in California, raisins not delivered to an inspection point. Any handler who accepts raisins at an inspection point for drying or other reconditioning shall be deemed to have received the raisins for reconditioning and shall be subject to the provisions of this part with respect to such raisins.

(3) For each lot of natural condition raisins received by a handler for acquisition, reconditioning, storage, inspection, or for disposition in eligible nonnormal outlets, the handler shall, immediately upon physical receipt and tentative acceptance thereof, issue a prenumbered (numbered serially in advance) door receipt or weight certificate showing the name and address of the tenderer, the weight of the lot, the number and type of containers in the lot, and any other information necessary to identify the lot. For the purposes of identifying incoming lots of raisins, other than dehydrated raisins covered by paragraph (e) of this section, a handler, if it is impracticable for him to issue immediately a door receipt or weight certificate, may issue for temporary use only a prenumbered "Request for USDA Inspection" on a form furnished by the Committee. Any such raisins so received by a handler shall, prior to their acceptance, be inspected at an inspection point during the unloading process, and if certified as standard raisins shall be, unless returned to the tenderer, either promptly acquired by the handler or received for storage on memorandum receipt: *Provided,* That in the absence

of an inspector to perform inspection during unloading, the handler shall not permit unloading to occur unless such absence is during normal business hours and the handler has a written statement from the inspection service to the effect that inspection cannot be furnished within a reasonable time: *And provided further,* That the raisins so unloaded shall be inspected promptly upon an inspector being available. It shall be the handler's responsibility in any case to arrange for the inspection, other than with respect to dehydrated raisins covered by paragraph (e) of this section, and furnish weight certificates promptly. Any raisins received by a handler as off-grade for disposition in eligible nonnormal outlets or for reconditioning may be accepted under a limited inspection as to condition capable of establishing concurrence with the classification of the off-grade raisins as to the particular category in which received. An application for such a limited inspection shall be submitted by the handler, on a form furnished by the Committee, to the inspection service prior to, or upon physical receipt of, such off-grade raisins. Such form shall provide for at least the name and address of the tenderer (equity holder), date, number and type of containers, net weight of the raisins, and the particular defect(s) the handler indicates would cause the raisins to be off-grade. The handler shall complete and sign the form. The application for the limited inspection shall not be acceptable unless signed by the tenderer. Each lot of raisins so accepted by a handler shall be reconditioned separately from any other lot.

(4) If any lot of natural condition raisins tendered to a handler is separated into two or more lots because a portion of the original lot failed to meet minimum grade and condition standards, or because the entire lot failed due to more than one defect, the handler shall issue a prenumbered weight certificate for each such new lot not returned to the tenderer, showing the name and address of the tenderer, the weight of the lot, and the number and type of containers in the lot. The weight of any meeting lot shall be determined by weighing it, or by weighing the failing portion of the incoming lot and deducting the weight thereof from the weight of the incoming lot. The weight of each failing lot shall be determined by weighing it, or by deriving such weight by applying the original average container weight to the number of containers.

(5) Any financially interested party may, upon the payment of any fees assessed by the inspection service, obtain an appeal inspection. An appeal inspection shall be applicable only to raisins which have not been removed from their containers, with pallet control cards still affixed, are readily identifiable, and have not been removed from the original inspection point: *Provided,* That when the condition of a lot of such raisins may have changed subsequent to the original inspection, an additional inspection, rather than an appeal inspection, may be obtained.

(6) Raisins produced by a handler shall be subject to the requirements of paragraph (a) (3) and (4) of this section upon delivery to an inspection point. Raisins produced by a handler by dehydration within an inspection point shall be subject to the requirements of paragraph (a) (3) and (4) of this section immediately upon completion of said dehydration.

(7) The inspection certificate for a mixed lot of natural condition raisins (raisins of different varietal types commingled within their containers) shall show the percentage which the raisins of each varietal type is of the total raisins contained in the lot.

(8) With respect to any lot of natural condition raisins being received and inspected at a handler's inspection point pursuant to paragraph (a)(3) of this section, the handler shall notify the inspection service if he elects to have the raisins inspected for infestation. If the handler elects not to have the raisins inspected for infestation, he shall: (i) Fumigate promptly all raisins he receives; (ii) notify the inspection service in advance of the time he plans to fumigate such raisins; (iii) permit the inspection service to monitor the fumigation; and (iv) permit the inspection service to make periodic incubation checks of his packed raisins. The inspection service shall certify the

raisins received as standard raisins if they meet all other grade and condition standards. If the handler elects to have the raisins inspected for infestation, the inspector shall afford such handler the opportunity to fumigate such raisins during the inspection and certification process. Such raisins shall remain under the supervision of the inspector during the fumigation. The inspection certificate shall not be issued until the fumigation is completed: *Provided,* That the inspection certificate shall be issued, whether or not the fumigation is completed, not later than five business days after the date the inspection and certification process is suspended by the inspector to permit fumigation.

(9) With respect to any lot (as defined in § 989.104(a)(1)) of natural condition raisins being received and inspected at a handler's inspection point pursuant to paragraph (a)(3) of this section and notwithstanding separation of the meeting portion of the original lot from the failing portions thereof for the purposes on § 989.104 and paragraph (a)(4) of this section, any tenderer may, when permitted by the handler and when notified by the inspector of defects during the inspection and certification process, and in accordance with the provisions of this subparagraph, perform any one or more of the following on an individual box basis: (i) Mix raisins within boxes containing raisins that are wet, or of high moisture content in some areas of the box; (ii) dump raisins from wet boxes into dry boxes; (iii) remove wet raisins; or (iv) remove foreign material such as sandburs, puncture vine seed, Eucalyptus pods or leaves, rocks, and sticks. This authorization to the tenderer shall not extend to raisins in containers larger than sweat boxes; and the number of boxes in the original lot on which the aforesaid actions may be performed during such process shall not exceed ten, or five percent of the total number of containers in the lot, whichever is less. Where the percentage computation results in a fraction of a box and is less than ten boxes, it shall be rounded upward to the next number. The entire lot of raisins shall remain under surveillance of the inspector during such process. The actions of the tenderer shall be done without delay, take place at the unloading dock in the inspection point, or in the immediate area thereof, and be under observation of the inspector.

(b) *Submission of inspection certificates to the Committee.* A copy of each inspection certificate which a handler is required to submit to the Committee pursuant to § 989.58(d) shall be submitted not later than Wednesday of the week following the week for which such certificate was issued. This may be accomplished by authorizing the inspection service to submit a copy of each such inspection certificate directly to the Committee. A copy of such authorization shall be furnished to the Committee.

(c) *Off-grade raisins*—(1) *Holding and identification.* The inspection certificates covering any lot of off-grade raisins shall state whether or not such off-grade raisins are storable. Any raisins which do not meet the applicable grade and condition standards shall be classified in one of the three categories specified in § 989.58(e)(1) within 5 business days (excluding Saturdays, Sundays, and holidays) after inspection or 3 such business days after issuance of the inspection certificate, whichever is later: *Provided,* That these time limits may be extended by the Committee under such conditions as it may deem necessary in the circumstances. The handler shall report to the Committee the information as required and specified in § 989.173(b)(5). Any such lot of off-grade raisins shall be identified immediately following inspection by fixing to a container on each pallet a prenumbered RAC control card (to be furnished by the Committee), and kept separate and apart from any other raisins in the handler's possession. In the event the handler does not normally use pallets in his operation the RAC control card shall be affixed to one or more of the containers in each lot. The RAC control cards shall remain fixed to the containers until the raisins are (i) disposed of by the handler in eligible nonnormal outlets, (ii) returned unstemmed to the tenderer, or (iii) submitted for reconditioning. The cards shall be removed only by an inspector of the inspection

service or authorized Committee personnel, except control cards designating lots held only for fumigation may be removed by the handler after the completion of fumigation to the satisfaction of the inspection service. Each lot of off-grade raisins not returned to the tenderer shall be stored by the handler separate and apart by varietal types from all other raisins and by disposition and conditioning categories which preserve the lot identity and, if for reconditioning, the defect identity. Off-grade raisins shall be stored in such a manner as to be accessible to the Committee.

(2) *Change in off-grade categories.* After raisins have been classified as to the categories in § 989.58(e)(1), any lot of natural condition off-grade raisins held by a handler under paragraph (i) or (iii) of § 989.58(e)(1), may be changed to the other category, or to paragraph (ii). Prior to making such change the handler shall notify the inspection service in writing at least one business day in advance of the time he plans to begin such change. Any off-grade lot under paragraph (ii) of § 989.58(e)(1) which has not been removed from the handler premises and is identifiable with the original inspection, may be tendered to the handler for the purposes of paragraph (i) or (iii) of § 989.58(e)(1) and, if accepted, the handler shall so report to the Committee. It shall be the responsibility of the handler to establish and maintain the identity of the raisins in the changed categories in accordance with the applicable provisions of paragraph (c)(1) of this section. Where the tenderer has a financial interest in the raisins the handler shall, before making any change in category, submit to the Committee evidence of the tenderer's permission to make any such change, except for changes from paragraph (i) or paragraph (iii) to paragraph (ii) of § 989.58(e)(1).

(3) *Interplant and interpacker transfer of off-grade raisins.* Any packer may, pursuant to § 989.58(e)(2) and under the surveillance of the inspection service, transfer to or from another packer's plant in California, any off-grade raisins for reconditioning. Such transfer may be for the packer's convenience or that of a financially interested person. Where a tenderer or other person has a financial interest in the raisins, the handler shall first obtain the tenderer's or other interested person's written agreement to the transfer. The handler shall notify the inspection service in advance and in writing on a form to be provided by the Committee, of the time he plans to transfer each lot and shall send a copy of the notification to the Committee. The notification shall be at least 1 business day in advance of the transfer unless a shorter period is acceptable to the inspection service. In the same manner except for the tenderer's or other person's written agreement, any packer may transfer off-grade raisins from one of his plants or inspection points to another of his plants in California. In both cases such raisins may be removed directly to the premises of the receiving packer or another plant of the packer under the surveillance of the inspection service. Upon completion of the transfer all applicable provisions of this part shall apply with respect to such raisins and the packer receiving them.

(4) *Reconditioning off-grade raisins—reconditioning requirements.* (i) The handler shall notify the inspection service in writing at least one business day in advance of the time he plans to begin reconditioning each lot of raisins, unless a shorter period is acceptable to the inspection service. Natural condition raisins which have been reconditioned shall continue to be considered natural condition raisins for purposes of reinspection (inspection pursuant to § 989.58(d)) or setaside by a handler to satisfy the handler's reserve pool obligation, after such reconditioning has been completed, if no water or moisture has been added; otherwise, such raisins shall be considered as packed raisins. The weight of the raisins reconditioned successfully shall be determined by reweighing, except where a lot, before reconditioning, failed due to excess moisture only. The weight of such raisins resulting from reconditioning a lot failing account excess moisture may be determined by deducting 1.2 percent of the weight for each percent of moisture in excess of the allowable tolerance. When necessary due to the presence

of sand, as determined by the inspection service, the requirement for deducting sand tare and the manner of its determination, as prescribed in paragraph (a)(1) of this section, shall apply in computing the net weight of any such successfully reconditioned natural condition raisins. If, after reconditioning, such raisins meet the minimum grade standards, but no longer are natural condition raisins as defined in § 989.8, any handler who acquires such raisins shall meet his reserve obligation from natural condition standard raisins of the same varietal type acquired by him. The weight of the reconditioned raisins acquired as packed raisins shall be adjusted to natural condition weight by the use of factors applicable to the various degrees of processing accomplished. The applicable factor shall be that selected by the inspector of the reconditioned raisins from among factors established by the Committee with the approval of the Secretary.

(ii) In reconditioning off-grade raisins, a handler shall use methods designed to remove the defects whereby the lot fails to qualify as standard raisins. Lots with identical defects may be reconditioned simultaneously (commingled basis) but lots with differing defects shall be reconditioned as separate lots.

(5) *General.* Reconditioning of off-grade raisins by a handler shall be done in accordance with such procedure as will enable the inspector to observe the off-grade raisins at any time and to make a proper inspection. A packer may recover raisins from residual raisin material obtained from his reconditioning operations in conformity with the applicable provisions of § 989.159(g)(1).

(6) *Off-grade raisins which are not reconditioned successfully.* (i) Except as provided in paragraph (c)(6)(ii) of this section, no handler shall return to the tenderer any off-grade raisins received for reconditioning which, after his reconditioning of them is complete, have been stemmed and which then fail to meet the applicable minimum grade standards. Any raisins which fail to meet the applicable minimum grade and condition standards or minimum grade standards after reconditioning and all residual material from reconditioning, held by the handler, shall be identified promptly by affixing to one or more containers in each lot, or to a container in each pallet if pallets are used, a prenumbered RAC control card as prescribed in paragraph (c)(1) of this section: *Provided,* That such failing raisins and residual material which are placed directly into trucks or trailers for immediate disposition need not be identified by affixing thereto a RAC control card. The handler shall hold the failing raisins and the residual material separate and apart from all other raisins. The control cards shall be removed from the containers only by an inspector of the inspection service or authorized Committee personnel. The handler shall physically dispose of the residual material, and any failing raisins which he does not return unstemmed to the tenderer, only in eligible nonnormal outlets as provided in § 989.159(g)(2).

(ii) Any packer may arrange for or permit the tenderer to remove the stemmed raisins (described in paragraph (c)(6)(i) of this section), but not the residual, directly to the premises, within California, of another packer for further reconditioning of the raisins at the latter's premises. Such removal and transfer shall be made under the surveillance of the inspection service. The packer shall notify the inspection service as required in paragraph (c)(3) of this section and shall obtain from the receiving packer a written statement that he will receive the raisins for reconditioning. The notification shall be on a form provided by the Committee, and a copy thereof and of the receiving packer's statement shall be forwarded by the transferring packer to the Committee. Such raisins may be received by the other packer without inspection. On and after such receipt of the raisins for further reconditioning, all applicable provisions of this part shall apply with respect to such raisins and the packer so receiving them.

(7) *Return of off-grade raisins to tenderer.* Any off-grade raisins which are to be returned unstemmed to the tenderer pursuant to § 989.58(e)(1)(ii), shall be physically returned within

five business days after the issuance of the inspection certificate: *Provided,* That such time limit may be extended by the Committee as it may deem justified by extenuating circumstances. The handler shall file with the Committee a report of the returned raisins as required in § 989.173(b)(4).

(d) *Reinspection of raisins held more than one hundred and twenty days on memorandum receipt.* No handler shall acquire raisins held on memorandum receipt for a period longer than one hundred and twenty (120) days unless such raisins have been reinspected and certified immediately prior to acquisition as meeting the minimum requirements for standard raisins: *Provided,* That the Committee at any other time may require such reinspection and certification of raisins held on memorandum receipt as a prerequisite to acquisition if it has reason to believe that the raisins do not then meet such requirements.

(e) *Inspection of raisins on dehydrator's premises*—(1) *Application and agreement.* (i) Any dehydrator may submit to the Committee for approval, and the Committee may approve, in accordance with the provisions of this paragraph an application and agreement, on a form furnished by the Committee, providing for dehydrator on-premise inspection of natural condition raisins produced by the dehydrator by subjecting grapes to artificial heat. Raisins so produced are referred to in paragraph (a)(3) of this section and in this paragraph as "dehydrated raisins."

(ii) The provisions of such application and agreement shall include at least the following:

(*a*) The dehydrator shall request the inspection service to inspect all dehydrated raisins which the dehydrator produces and to issue a related memorandum report of inspection at the time of loading any quantity of such raisins for delivery to a packer's inspection point;

(*b*) The dehydrator will arrange with the inspection service for the necessary inspection service to be performed by the service, and the dehydrator will submit to the Committee a statement from the inspection service that the dehydrator has adequate facilities for the inspection and that such arrangements have been made;

(*c*) All necessary reconditioning of dehydrated raisins, identification and segregation of raisins, and movement of inspected dehydrated raisins on or from the dehydrator's premises shall be done in such manner and under such conditions as the inspection service may require;

(*d*) The dehydrator shall, at the time of the packer's receipt of such raisins, furnish to the packer to whose inspection point the inspected raisins are delivered the original and one copy of the memorandum report of inspection covering such raisins;

(*e*) The dehydrator shall maintain such records and furnish such reports and permit access to such records and the dehydrator's premises as required in the application and agreement or as the Committee may subsequently request; and

(*f*) The application and agreement may be suspended or terminated as provided therein.

(iii) The Committee will notify raisin packers of each dehydrator whose application and agreement has been approved by the Committee (such dehydrator is referred to in this subpart as "authorized dehydrator"); similarly, the Committee will notify packers of each suspension or termination of a previously approved application and agreement.

(2) *Delivery of inspected dehydrated raisins.* Any dehydrated raisins which (i) are inspected on an authorized dehydrator's premises where produced; (ii) are moved promptly and directly to a packer's inspection point from the premises of the authorized dehydrator; (iii) are accompanied by an applicable memorandum report of inspection to be furnished to the packer; and (iv) are otherwise in compliance with the provisions of such approved application and agreement and this paragraph may be received by the packer without the inspection at time of receipt required by § 989.58(d). With respect to such dehydrated raisins, the packer shall comply with all applicable requirements and procedures of this part, including, but not limited to, inspection after any necessary recondi-

tioning and the inspection prescribed in § 989.59.

(3) *Packer's obligations.* Immediately upon a packer's receiving any such already inspected dehydrated raisins accompanied by the applicable memorandum report of inspection, the packer shall give to the inspector at the packer's inspection point where the dehydrated raisins were received, the original and one copy of such memorandum report so that the inspector may enter the net weight and scale ticket number on such memorandum report of inspection and copy thereof. Whenever a packer receives off-grade raisins from an authorized dehydrator he shall so advise the inspector at the packer's inspection point at the time of such receipt; and such raisins shall not be unloaded except in the presence of the inspector or in accordance with such prior arrangements as may have been made between the packer and the inspection service.

(f) *Inspection of raisins at cooperative bargaining association's receiving station*—(1) *Application and agreement.* (i) In accordance with the provisions of this paragraph, any cooperative bargaining association may submit to the Committee for approval, and the Committee may approve, an application and agreement, on a form furnished by the Committee, providing that where the association receives from individual producers lots of natural condition raisins at any of its receiving points and the raisins are inspected and stored consistent with such application and agreement, such lots shall be eligible for delivery to handlers, pursuant to paragraph (f)(3) of this section, without reinspection. Any raisins which upon inspection by the inspection service do not meet the applicable grade and condition standards shall be identified immediately following inspection and kept separate and apart from any other raisins in the association's possession.

(2) *Terms and conditions.* The provisions of such application and agreement shall include at least the following terms and conditions:

(i) That the association shall, prior to delivery of any raisins to handlers, arrange for inspection services at the association's receiving station(s), and cause to be submitted to the Committee a statement by the inspection service of such arrangement and of the association's having adequate laboratory and other facilities for such services available at the association's receiving station(s).

(ii) That the association shall maintain such facilities satisfactory to the inspection service.

(iii) That the association shall request inspection of each lot of raisins immediately upon physical arrival thereof at the association's receiving station(s), and shall provide the inspector with any assistance necessary in the inspection of such raisins, including the movement of individual containers.

(iv) That the association shall fumigate all raisins received at the association's receiving station(s) as necessary to assure that the raisins are free from active infestation and maintain them as such while on such premises, and that fumigation shall be performed to the satisfaction of the inspection service.

(v) That the association shall, with respect to all raisins entering its premises which are not returned to the producer as provided in paragraph (f)(2)(vi) of this section, promptly affix to one or more containers in each lot, or to a container in each pallet if pallets are used, a Committee control card showing thereon such information as the Committee requires to maintain the producer identity of each lot and prevent commingling with any other lot. The association shall not move all or any portion of a lot of raisins on the premises of the association's receiving station(s) or load any such raisins for shipment, except in the presence of an inspector of the inspection service.

(vi) That the association shall store any standard raisins and any off-grade raisins which are held by it after receipt and inspection on the premises of its receiving station(s) under conditions which protect the raisins from rain, infestation and contamination, and which can be expected to maintain their respective conditions except for normal and natural deterioration and shrinkage. Any raisins which after

receipt and inspection are not accepted and held by the association shall be returned to the producer within 5 business days after the issuance of the inspection certificate.

(vii) That the association shall furnish the inspection service with a completed Committee form requesting issuance, at the time of loading any lot of inspected raisins for delivery to any handler's inspection point, of a memorandum report of inspection covering such lot.

(viii) That the association shall deliver to the handler at the time of receipt of any such lot of eligible raisins at the handler's inspection point the original and one copy of the inspection service's related memorandum report of inspection; and such original and copy shall accompany the shipment of such lot from the premises of the association's receiving station(s) to the handler's inspection point.

(ix) That the association shall maintain complete records of the receipt, holding and disposition of each lot of raisins and retain such records for at least 2 years after the crop year in which such transactions occurred.

(x) That the association shall file promptly with the Committee certified reports showing such information as the Committee may request relative to the association's receipts, holdings, and dispositions of raisins.

(xi) That the association shall permit the Committee, the inspection service, and the Secretary of Agriculture, through their duly authorized representatives, to have access to the premises of the association's receiving station(s) to inspect such premises and any raisins thereon and any and all records with respect to the association's receipts, holdings and dispositions of raisins.

(xii) That upon approval of the application and agreement the Committee will notify handlers of such approval and that eligible lots of inspected raisins will not require incoming inspection at handler inspection points; will notify the interested handlers of any suspension or revocation, for good cause, of the eligibility of a particular lot of raisins; and will notify handlers of any suspension or termination of the application and agreement.

(xiii) That the Committee will request the inspection service to establish a fee to the association for the services to be rendered at the same rate as is charged handlers.

(xiv) That the application and agreement may be suspended or terminated as provided therein.

(3) *Waiver of requirement for incoming inspection at handler inspection point.* Any lot of raisins which (i) is inspected on the premises of the association's receiving station(s) pursuant to an approved application and agreement, (ii) is in compliance with the provisions of such application and agreement and this paragraph, (iii) is moved under the surveillance of the inspection service to a handler's inspection point from the association's receiving station(s) after issuance of the related memorandum report of inspection, and (iv) is accompanied by such memorandum report to be furnished to the handler may be received by the handler without the inspection as required by § 989.58(d) at time of receipt.

(4) *Handler's obligations.* With respect to such raisins received by the handler, the handler shall comply with all applicable requirements and procedures of this part, including, but not limited to, the inspection prescribed in § 989.59 and that required, as prescribed in § 989.58(d), prior to the handler acquiring reconditioned raisins. Immediately upon a handler receiving any such raisins accompanied by the applicable memorandum report of inspection, the handler shall give to the inspector at the handler's inspection point where such raisins are received, the original and one copy of the memorandum report so that the inspector may enter the net weight and scale ticket number on such memorandum report of inspection and copy thereof.

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§ 989.159 Regulation of the handling of raisins subsequent to their acquisition.

(a) *Inspection facilities.* At each of the premises where packed raisins are to be inspected each handler shall, at his expense provide reasonably safe and adequate space and other facilities necessary for the proper and efficient inspection of such raisins.

(b) *Identification of inspected raisins.* (1) Each handler shall mark each shipping container with legible code or other identification, satisfactory to the Committee and the inspection service which shall indicate (i) with respect to packed raisins, the date that the raisins in such shipping containers were packed, and (ii) with respect to shipments of natural condition raisins, the date on which such raisins were inspected.

(2) Each handler shall furnish promptly to the Committee, through the inspection service, a certified report on a form furnished by the Committee showing the handler's count and weight of the raisins of each pack and varietal type packed each day.

(c) *Outgoing inspection.* (1) Outgoing inspection and certification of raisins as required by § 989.59(d) shall be made as set forth in this paragraph.

(2) Such inspection of natural condition raisins (which is subject to exceptions and exemptions provided in this part) shall be made of each individual lot and in each case not more than five days before the date of shipment or other final disposition of the lot. The certificate that the raisins meet the applicable minimum grade and condition standards for natural condition raisins, which the handler is required to obtain and submit to the Committee pursuant to § 989.59(d), shall be on Form FV 146 labeled "Certificate of Quality and Condition (Processed Foods)." If shipment involves exportation to a foreign country, the handler shall surrender to the United States Customs Service at the port of exit two copies of such inspection certificate. Such an inspection and certification (on Form FV 146) may, if requested by the handler, be made at the time of his receipt or acquisition of the raisins. In such an event, no additional inspection shall be required if the lot remains intact and identifiable, and shipment or other final disposition takes place within five days after the date of the inspection.

(3) Such inspection of packed raisins shall be made prior to shipment or other final disposition, and unless made during the final processing or packing operations so as to facilitate proper sampling, the inspector shall perform the inspection on the basis of representative samples drawn from shipping containers of the packed raisins.

(4) Except as otherwise provided in this part, where there is presented for inspection a lot of packed raisins consisting of raisins of different varietal types or sub-types commingled within their containers, each such type and sub-type shall be inspected separately, except that inspection for moisture shall be performed on the lot as a whole. The inspection certificate shall show the respective percentages which the raisins of the various types and sub-types are of the lot and whether each meets the applicable minimum grade standards. In the event the raisins of any such varietal type or subtype contained in the lot fail to meet the applicable requirements, other than for moisture, none of the lot shall be certified as meeting minimum grade standards unless it is found to be practicable to separate the raisins into two new lots, one which meets and the other which fails to meet all of the applicable minimum standards, respectively. Any lot of mixed types or sub-types of packed raisins for which minimum grade standards are prescribed for each type or sub-type pursuant to § 989.59(a) and (b) but which in their commingled form cannot be inspected against the standards for the respective varietal types or subtypes and hence are excluded from the category of "Mixed types" as defined in the then effective United States Standards for Grades of Processed Raisins, or any raisins which as a mixed lot contain moisture in excess of 18 percent, shall not be certified as meeting the minimum grade standard for packed raisins.

(d) *Submission of inspection certificates to the Committee.* A copy of each inspection certificate which a handler

is required to submit to the Committee pursuant to § 989.59(d) shall be submitted not later than Wednesday of the week following the week in which the certificate was issued. This may be accomplished by authorizing the inspection service in writing to submit a copy of each such inspection certificate directly to the Committee. A copy of such authorization shall be furnished to the Committee.

(e) *Term of inspection certificate.* Any handler who: (1) Fails to ship or make other final disposition for human consumption of any lot of packed raisins within 90 calendar days, or of any lot of natural condition raisins within 5 calendar days, after the date of the last inspection of the lot; or

(2) Has any shipment or portion of a shipment returned to his inspection point or storage premises within the area,

shall, before any such shipment or final disposition, or before blending with other raisins, have such raisins inspected for condition and shall furnish promptly to the Committee (which may be through the inspection service as provided in § 989.158(b)) a copy of the inspection certificate showing that the raisins meet the respective requirements of this part for shipment, final disposition or blending.

(f) *Exemption of experimental and specialty packs*—(1) *Shipment under exemption.* Upon obtaining approval of the Committee as provided in this paragraph, any handler may ship or dispose of raisins in experimental or specialty packs without regard to one or more of the requirements of the minimum grade standards for packed raisins and inspection and certification requirements, prescribed pursuant to § 989.59. For the purpose of this exemption, experimental and specialty packs means raisins processed using methods, materials, or techniques that are not normally employed in packing raisins.

(2) *Application for exemption.* Each application for exemption shall be filed with the Committee in triplicate. The application shall at least contain information as to: (i) The name and address of the handler; (ii) the estimated quantity of each varietal type of raisins for which the exemption is requested; (iii) the specific requirements in the minimum grade standards from which exemption is requested; (iv) the special processing involved; (v) the net weight of each type of container; (vi) whether disposition will be made direct to consumers, wholesalers, retailers, persons, or organizations, and any special uses to be made of such raisins; and (vii) the general quality, style, and condition of the raisins for which the exemption is requested.

(3) *Committee action on application.* The Committee in its discretion shall approve each application for exemption of raisins, if it concludes that such exemption shall not jeopardize the objectives of the marketing order program. The Committee shall notify the handler promptly in writing of its approval or disapproval of his application and, if the application is approved, the maximum quantity for which approval is granted. If the application is disapproved, the Committee shall inform the handler of the reasons therefor.

(4) *Reports.* The handler shall report shipments or other dispositions under an approved exemption as required pursuant to § 989.173(e).

(g) *Off-grade raisins, other failing raisins, and raisin residual material*—(1) *Recovery of raisins.* For the purposes of §§ 989.59(f) and 989.158(c)(4), a packer may recover raisins from: (i) Residual raisins from his processing of standard raisins; (ii) any raisins acquired as standard raisins which fail to meet the applicable outgoing grade and condition standards; (iii) any raisins rejected on a condition inspection; and (iv) residual raisins from reconditioning of off-grade raisins: *Provided,* That such recovery under paragraph (g)(1) (ii) and (iii) of this section must occur without blending, if the failure to meet the minimum grade standards for packed raisins is due to a defect or defects affecting the wholesomeness of the raisins: *And provided further,* That such recovery under paragraph (g)(1)(iv) of this section must occur without blending, except as permitted in § 989.158(c)(4)(ii), and the weight of standard raisins in residual from off-grade raisins shall be credited equita-

e same lot or lots from which
ual was obtained. The provi-
his paragraph are not intend-
xcuse any failure to comply
applicable food and sanitary
l regulations of city, county,
eral, or other agencies having
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position. (i) Except as author-
is part, no handler shall ship
vise dispose of any off-grade
ther failing raisins, or raisin
material. Any handler may
nsfer, or otherwise dispose of
raisins, other failing raisins,
n residual material to or at
thin the continental United
ther than Alaska) for use in
onnormal outlets only after
h the Committee a written
on to make such shipment,
or other disposition and re-
s written approval thereof.
the requirements of prior
l approval of any such appli-
all not apply to:

transfer of any such raisins
l material by a handler from
is plants to another of his
the State of California,
y transfer of raisins which
econditioning shall be in ac-
with § 989.158(c)(3);

interpacker transfer or re-
off-grade raisins made in ac-
with § 989.158(c)(3) and of
fully reconditioned off-grade
hich have been stemmed
ling raisins) made in accord-
§ 989.158(c)(6)(ii);

return by a handler of un-
off-grade raisins to the ten-
in accordance with
c)(7);

shipment or transfer of off-
sins, other failing raisins, or
idual material by any han-
processor within the State of
for use, within the State, in
onnormal outlets;

shipment or transfer of off-
sins, other failing raisins, or
idual material by a handler
rson with an effective agree-
the Committee, in which he
) to use such raisins and
dual material only in eligible
l outlets, (*2*) if not so used,
the Committee liquidated damages in the amount and under the conditions specified in paragraph (g)(2)(iii) of this section, and (*3*) to maintain complete, accurate, and current records regarding his dealings in raisins and raisin residual material, retain the records for at least 2 years, and permit representatives of the Committee and Secretary of Agriculture to examine all of his books and records relating to raisins and residual material; and

(*f*) Any direct use by the handler of such raisins or material in eligible nonnormal outlets within the State of California.

(ii) Each such application shall, in addition to the agreement specified in paragraph (g)(2)(iii) of this section, include as a minimum: (*a*) The names and addresses of the handler, the buyer, the consignee, and the user; (*b*) the quantity of off-grade and other failing raisins and the quantity of raisins residual material to be shipped or otherwise disposed of; (*c*) a description of such off-grade raisins and other failing raisins and raisin residual material, as to type or origin; (*d*) the present location of such raisins and raisin residual material; (*e*) the particular use to be made of the raisins; and (*f*) a copy of the sales contract, which may be on a form furnished by the Committee, wherein the buyer agrees:

(*1*) Not to ship such raisins or raisin residual material to points outside the continental United States or to Alaska;

(*2*) To dispose of the raisins or raisin residual material only for uses in eligible non-normal outlet(s); and

(*3*) To maintain complete, accurate, and current records regarding his dealings in raisins, retain the records for at least 2 years, and permit representatives of the Committee and of the Secretary of Agriculture to examine all of his books and records relating to raisins and residual material.

(iii) Each such application shall also include a provision for liquidated damages wherein the handler, in consideration of the Committee approving his application, agrees that in the event any raisins or raisin residual material covered by the approved application should be shipped to points outside of

tinental United States or to or disposed of in other than el- non-normal outlets, by any it will cause serious and sub- damage to the Committee, to rs, and to handlers of raisins be difficult, if not impossible, e the extent of such damage. re, the handler shall pay to mittee a sum equal to the es- d field price as liquidated dam- each ton so shipped or dis- f, such sum being a fair meas- amages and not a penalty.

he Committee shall notify the t in writing of its approval n acting on an application, the tee may disapprove the appli- hen: (*a*) The application is in- e, or any required information been submitted; (*b*) the Com- has cause to believe that the r raisin residual material cov- the application will not be or disposed of in accordance e application; or (*c*) the han- any of the parties involved in posed shipment or disposition, ped or made disposition or use s or raisin residual material by a previously approved ap- inconsistent with that appli- When the use or the name and of the user or consignee are wn to the handler, the Com- hall not approve the applica- til it has been informed as to e and user and consignee of the r residual material.

e Committee may, for cause, ny previously approved appli- f a handler if the handler, consignee or user covered by lication has shipped or made ion inconsistent with any ap- application. The Committee tify the handler in writing of ocation.

he handler shall furnish the tee with a copy of the ship- cument or other documentary e of the disposition as may be tory to the Committee and at mes as the Committee may

peal inspection. An appeal in- on an original inspection may ined from the inspection serv- the request of any financially interested party and upon the payment of any fees assessed by the inspection service for such appeal inspection.

[27 FR 3112, Mar. 31, 1962, as amended at 30 FR 6906, May 21, 1965; 31 FR 16306, Dec. 21, 1966; 36 FR 13980, July 29, 1971; 38 FR 13012, May 18, 1973; 38 FR 20237, July 30, 1973; 42 FR 52377, Sept. 30, 1977; 49 FR 18731, May 2, 1984]

§ 989.160 Exemptions.

(a) Any processor may receive or acquire any raisins for use in eligible nonnormal outlets, and dispose of them for such use, without having them inspected and certified. Processors receiving or acquiring raisins under such exemption, or otherwise receiving or acquiring raisins which do not meet the applicable minimum grade and condition standards, shall not ship or otherwise dispose of any such raisins except in conformity with the provisions of § 989.159(g)(2). Processors shall report receipts and acquisitions and make such other reports as are or may be required pursuant to §§ 989.73 and 989.173.

(b) *Disposition of raisins produced in Southern California.* Raisins produced from grapes dried on the vine in the counties of Riverside, Imperial, San Bernardino, Ventura, Orange, Los Angeles, and San Diego, which are disposed of for use in distillation, livestock feed, or by export in natural condition to Mexico shall be exempt from the provisions of this part.

[30 FR 6906, May 21, 1965, as amended at 38 FR 13013, May 18, 1973]

Volume Regulation

§ 989.166 Reserve tonnage generally.

(a) *Shrinkage allowance for normal and natural shrinkage in weight.* Each handler shall be entitled to a shrinkage allowance for normal and natural shrinkage in weight of 1 percent of the original natural condition weight of reserve tonnage raisins acquired by him during the crop year and held by him (for the account of the Committee) on the Saturday nearest to May 1 of the same crop year. Handlers shall be entitled to no other allowance for normal and natural shrinkage in

of such raisins acquired
p year: *Provided,* That
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cquisition, upon submis-
handler of satisfactory
n shrinkage occurring
iod of holding after the
year.

obligations—(1) *Natural*
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ot of natural condition
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et aside such raisins to
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tainer on each pallet or
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) which shall remain af-
raisins are processed or
natural condition rai-
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ot be delivered to the
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t approval of the Com-
eceiving handler.

rietal types. A handler
ny lot of natural condi-
f mixed varietal types
within their containers)
e reserve tonnage set-
n for each varietal type
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each such varietal type
ot been mixed or com-
aisins of any other vari-
obligation as to each va-
ll be computed accord-
serve percentage estab-
Secretary, and the per-
varietal type contained
lot as shown by the in-
tion certificate applica-

of reserve tonnage rai-
limits for setting aside
Handlers shall be al-
dar days (exclusive of
ndays, and holidays),
iminary or interim per-

centages have been computed and announced by the Committee, and after the publication in the FEDERAL REGISTER of the applicable final reserve percentages established for the crop year, or after any reserve tonnage raisins are acquired subsequent to the percentages being announced or established, to segregate and properly stack each varietal type of reserve tonnage raisins.

(2) *Conditions.* Each handler shall store reserve tonnage raisins in storage and under conditions which protect them from rain and which reasonably can be expected to maintain the raisins free of any biological or other infestation or contamination. Each handler shall, pursuant to § 989.66(b)(2), store each varietal type of reserve tonnage raisins held by him for the account of the Committee, separate and apart from all other raisins. Storage of such raisins shall be deemed "separate and apart" if the containers are so marked and placed as to be capable of ready and clear identification as to the category in which are held. Reserve tonnage raisins shall be stored in sweat boxes, picking boxes, or other portable containers not exceeding one ton capacity:

(3) *Substitution of free tonnage.* A handler may, pursuant to § 989.66(b)(3), after giving the Committee reasonable advance notice in writing and under its direction and supervision, substitute standard raisins for reserve tonnage raisins.

(d) *Remedy in the event of failure to deliver reserve tonnage raisins.* A handler who fails to deliver to the Committee, upon request, any reserve tonnage raisins in the quantity and quality for which he has become obligated (after any shrinkage allowances which may then be in effect are applied and allowances for any deterioration due to conditions beyond his control are made) shall compensate the Committee for the amount of the loss resulting from his failure to so deliver. The amount of compensation for any shortage of tonnage shall be determined by multiplying the quantity of reserve raisins not delivered by the latest weighted average price per ton received by producers during the particular crop year for free tonnage rai-

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(e) *Disposition*
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(f) *Offers of res*
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varietal type or types, already paid or credler and cost incurred e on account of the to deliver. The price shall be deterse sales made during p year up to the time t is requested by the p to the end of the ear, whichever date The amount which a pensate the Committe raisins which have s to be off-grade in storage for reasons l, shall be the latest price received by the e applicable varietal ool raisins, less the received by the Composition of the detelivered by the hange value of such rai- by the Committee). d to the Committee f such deficiencies e earnings of the appool. The remedies aragraph shall be in ot exclusive of, any dies or penalties pre- for failure on the r to comply with the ons of the act or of

of reserve tonnage come off-grade for e handler's control. ge raisins held by or of the Committee f-grade for reasons er's control shall, at discretion, be recond of by the Committee's control, ormal outlets. Any tained in the reconition of such raisins, nsurance carried by hall be charged to rve pool.

rve tonnage raisins le in export. Whene offers reserve tonandlers for sale in ecify in addition to ct terms and condiantity, the price and period within which each handler will be permitted to purchase his share of the offer. Whenever a handler's share of an offer is less than, or exceeds, his holding of reserve tonnage raisins by not more than 10 tons, the Committee may adjust his share so as to avoid the cost involved in the physical transfer of raisins. If, prior to the expiration of the offer period, a handler desires to obtain reserve tonnage in an amount greater than that represented by his share of the offer, he may negotiate with another handler for any unpurchased portion of the other handler's share of an outstanding offer. No such transaction shall be deemed to reduce the transferring handler's share or to increase the transferee handler's share so as to affect either handler's share privileges in subsequent offers. Transfers to implement such transactions between handlers shall be permitted by the Committee only upon receipt of written authorization, on a form furnished by the Committee, by the transferring handler. All limitations applicable to the transferred tonnage shall continue to apply. Such reserve tonnage raisins will be released by the Committee to the transferee handler upon submission of his completed application and full payment for such raisins, and such transferee handler shall be responsible to the Committee for all documentation required in connection with the transaction. All such transfers shall be made at the expense of the handlers concerned.

[32 FR 15916, Nov. 21, 1967, as amended at 38 FR 14960, June 7, 1973; 42 FR 52377, Sept. 30, 1977; 49 FR 18731, May 2, 1984]

§ 989.167 Disposal of reserve raisins.

(a) *Offer of reserve tonnage raisins for use in noncompetitive outlets.* Whenever the Committee proposes to offer to sell standard reserve tonnage raisins in noncompetitive outlets pursuant to § 989.67(a) and (b), it shall promptly file with the Secretary complete information with respect thereto and the basis therefor. The Secretary shall have the right to disapprove, within seven calendar days, the making of such an offer or sale or any term or conditions thereof.

Determination of price of reserve ge sold for free tonnage use. ever, pursuant to § 989.67(j), the ittee concludes, with respect to arietal type of raisins, that a vard trend in the price received oducers for free tonnage, or in rices received by handlers for onnage packed raisins, makes it cticable to sell reserve tonnage average price received by pro- for free tonnage plus pooling the Committee, subject to the ements of § 99.67(j), may sell re- tonnage raisins at the currently ling field price for free tonnage of the same varietal type, such price is deemed to be un- entative of the current f.o.b. of free tonnage packed raisins. h an event, or if there is no cur- ield price, the Committee shall any offer of reserve tonnage at ximately the computed field obtained by deducting from the t f.o.b. price for free tonnage d raisins of the varietal type to fered, the approximate recent ng and handling margin between packed price and the field price ee tonnage raisins. This para- (b) shall not be in effect from 0, 1984, through July 31, 1986.

Terms of reserve tonnage offers. ever the Committee offers re- tonnage raisins to handlers for free tonnage outlets, the Com- shall, among other terms and tions of the offer, specify (1) the in which each handler shall be the opportunity to purchase his of the offer, and (2) the period ich each eligible handler shall be an opportunity to purchase his ctive share of any reoffer. In the reserve pool raisins are trans- by the Committee, the purchas- andler shall promptly empty the s from the containers used in the fer so that the Committee may the containers and pallets used e transfer to the handler from the raisins were transferred n 10 business days from the date ansfer. Any handler who refuses rmit the containers in which re- pool raisins are stored to leave remises, shall, at his expense, place such raisins in containers supplied by the Committee.

[32 FR 15916, Nov. 21, 1967; 33 FR 2380 Jan. 31, 1968, as amended at 49 FR 30296, July 30, 1984]

EFFECTIVE DATE NOTE: At 49 FR 30296, July 30, 1984, § 989.167(b) was suspended from July 30, 1984 through July 31, 1986, effective July 30, 1984.

REPORTS AND RECORDS

§ 989.173 Reports.

(a) *Inventory reports.* Each handler shall submit to the Committee as of the close of business on July 31 of each crop year, and not later than the following August 6, an inventory report which shall show, with respect to each varietal type of raisins held by him:

(1) The quantity of free tonnage raisins, segregated as to locations where they are stored and whether they are natural condition or packed;

(2) The quantity of reserve tonnage raisins for the account of the Committee; and

(3) The quantity of off-grade raisins segregated as to those for reconditioning and those for disposition as such. Upon request by the Committee, each handler shall file at other times, and as of other dates, any of the said information which may reasonably be necessary for the determination or revision of marketing policy and which the Committee shall specify in its request.

(b) *Reports of raisins received or acquired*—(1) *General.* (i) Except as otherwise provided in paragraph (i) of this section, each handler shall submit to the Committee (on forms furnished by it) for each week (Sunday through Saturday or such other 7-day period for which the handler has submitted a proposal to and received approval from the Committee) and not later than the following Wednesday, the reports specified in paragraphs (b) (2), (3), (4), and (5) of this section.

(ii) For each report required to be submitted pursuant to this paragraph, the required information shall be shown separately for each varietal type. With each report, other than that specified in paragraph (b)(4) of this section, the handler shall submit

of the door receipt, weight cer- or such other document ap- by the Committee that accu- eflects the weight of each lot d, for each lot of raisins re- r acquired by him during the g period and for each lot of stored on memorandum or use receipt which was returned tenderer during such period, hall show the information to tained on such receipts or certificates as specified in 8(a)(3). At the time he submits orts specified in paragraphs (b) (3) of this section to the Com- each handler shall submit a each such report to the In- Service.

quisition of standard raisins. ndler shall report:

e total net weight of the stand- ins acquired during the report- od, segregated when appropri- o free tonnage and reserve ton-

ne location of the reserve ton- sins; and

The cumulative totals of such ions (as so segregated) from nning of the then current crop

tandard raisins received for ndum storage. Each handler ith respect to all standard rai- ld for memorandum receipt, bailment, or warehousing (rai- ived other than by acquisition handler transfer), report:

e net weight of such standard held at the start of the report- od;

ne net weight of such standard received during the reporting

he net weight of such standard acquired during such period luded with the acquisitions re- to be reported pursuant to ph (b)(2) of this section;

he net weight of such raisins d during such period to the from whom they were re- and

ne net weight(s) and location(s) raisins held at the end of such

f-grade raisins returned to ten- Each handler shall report with respect to each lot of off-grade raisins which the handler returned during the reporting period to the tenderer pursuant to paragraph (1) of § 989.58(e):

(i) The inspection certificate number;

(ii) The net weight;

(iii) The name of the tenderer; and

(iv) The date the lot was returned to the tenderer.

(5) *Off-grade raisins received for reconditioning or disposition in eligible nonfood channels.* Each handler who is not a processor shall, with respect to all off-grade raisins received by the handler and retained by him for reconditioning or for disposition or use in eligible nonnormal outlets, report for each category received or reconditioned during the reporting period:

(i) The name of each tenderer;

(ii) The net weight of such raisins;

(iii) The locations where received;

(iv) The inspection certificate number covering each receipt;

(v) The name and address of each person to whom residual or off-grade lots were delivered for disposition, and the respective net weight delivered; and

(vi) The total net weight (according to location) of each category of off-grade raisins held by him at the end of the reporting period.

Each nonacquiring handler shall report also the weight of standard raisins recovered from reconditioning, their inspection certificate number(s) and the handler or other person to whom the standard raisins were delivered.

(6) *Monthly report of raisins received or acquired by processors.* Each processor who receives or acquires off-grade raisins, or who avail himself of the exemptions from the grade and inspection requirements provided in §§ 989.58, 989.59(f), and 989.160 and receives or acquires raisins or raisin residual material, shall submit to the Committee on or before the 7th day of each month a report of such raisins, raisin residual material, and off-grade raisins received or acquired during the preceding month. Each report shall show for each varietal type:

(i) The name and address of each handler, producer, or other person from whom such raisins or raisin residual material was received or acquired; and

(ii) The net weight of such raisins and raisin residual material.

(c) *Reports of disposition*—(1) *Free tonnage raisins.* Each month each handler who is not a processor shall furnish to the Committee, on an appropriate form provided by the Committee and so that it is received by the Committee not later than the seventh day of the month, a report showing the aggregate quantity of each varietal type of free tonnage packed raisins and standard natural condition raisins which were shipped or otherwise disposed of by him during the preceding month (exclusive of transfers within the State of California between the plants of any such handler and from such handler to other handlers). Such required information shall be segregated as to:

(i) Domestic outlets (exclusive of Federal Government purchases) according to the quantity shipped in consumer cartons, the quantity shipped in bags having a net weight content of four pounds or less, and the quantity shipped in bulk packs (including, but not limited to those in bags having a net weight content of more than four pounds);

(ii) Federal Government purchases;

(iii) Export outlets according to the quantity shipped in consumer cartons, the quantity shipped in bags having a net weight content of four pounds or less, and the quantity shipped in bulk packs (including, but not limited to, those in bags having a net weight content of more than four pounds);

(iv) Export outlets, by countries of destination; and

(v) Each of any other outlets in which the handler has made disposition of such raisins other than by any transfer which is excluded by the preceding sentence.

(2) *Disposition by handlers (other than processors) of off-grade raisins, other failing raisins, and raisin residual material.* Each handler who is not a processor shall submit to the Committee on or before the seventh day of each month a report of all shipments and other dispositions made during the preceding month of off-grade raisins, other failing raisins, and raisin residual material. Such report shall be submitted on a form furnished by the Committee and shall include the following information:

(i) Date of each shipment and other disposition;

(ii) Name and address of each buyer and receiver; and

(iii) Description and net weight of the raisins and raisin residual material in each shipment or other disposition.

(3) *Disposition reports by processors.* Each processor shall submit to the Committee, upon its request, such of the following information and for such period as the Committee shall specify;

(i) The quantity of raisins and raisin material sold or otherwise disposed of by processing operations, segregated as to the processing outlets and the kinds of raisins or raisin material which the Committee shall specify; and

(ii) The quantity of raisins or raisin material sold or otherwise disposed of by the processor, segregated as to specified outlets and kinds of raisins or raisin material.

(d) *Reports of interhandler transfers*—(1) *Free tonnage.* Any handler who transfers free tonnage raisins to another handler within the State of California shall submit to the Committee not later than five calendar days following such transfer a report showing:

(i) The date of transfer;

(ii) The name(s) and address(es) of the handler or handlers and the locations of the plants;

(iii) The varietal type, net weight and condition of the raisins transferred; and

(iv) If packed, the inspection certificate number in the event such raisins have been inspected prior to such transfer and a certificate issued. Two copies of such report shall be forwarded to the receiving handler at the time the report is submitted to the Committee, on one of which the receiving handler shall certify to the receipt of such raisins and submit it to the Committee within five calendar days after the raisins or the copies of such report have

been received by him, whichever is later.

(2) *Off-grade and other failing raisins.* Any handler who transfers off-grade raisins or other failing raisins including off-grade raisins unsuccessfully reconditioned, to another handler, other than a processor within the State of California, shall submit to the Committee (on forms furnished by it) no later than Wednesday following the week of the transfer:

(i) The date of transfer;

(ii) The name and address of the receiving handler and the location of his plant;

(iii) The name and address of the tenderer of each lot included in the transfer and the inspection certificate numbers applicable to the lot; and

(iv) The varietal type, net weight, and condition of the raisins.

(e) *Report of shipments of experimental or specialty packs under exemption.* Each handler who obtains an exemption pursuant to § 989.59(g) for the shipment of experimental or specialty packs of raisins shall submit to the Committee on a copy of the approved application for exemption a report showing the quantity of raisins shipped or disposed of under such exemption. The handler shall submit the report promptly after the end of the crop year or after completion by him of all shipments of such exempted raisins, whichever is earlier.

(f) *Reports pertaining to the release of reserve tonnage and marketing policy information.* Upon request of the Committee, each handler shall submit to the Committee on forms furnished by it a report containing such of the following information for each specified varietal type of raisins as the Committee may request:

(1) The quantity of free tonnage raisins held by him in and outside California as of the date specified in the Committee's request, segregated by the portion sold and the portion not sold;

(2) The total quantity of raisins expected to be acquired by him subsequent to the date specified by the Committee, pursuant to purchase contracts with producers and dehydrators, which are in effect as of the date specified by the Committee;

(3) The weighted average price paid by him to producers and dehydrators for free tonnage raisins, natural condition basis, during the period specified by the Committee and the quantity of raisins for which such average was computed;

(4) The quantity of free tonnage raisins sold or sold and shipped (as to which category the Committee shall specify) by him during a period specified by the Committee, segregated to show the quantities sold or sold and shipped in:

(i) Domestic markets; and

(ii) Foreign markets, detailed by country; and

(5) The average weighted f.o.b. sales prices received from sales, during a period specified by the Committee, of raisins in 30 pound fibre cases in domestic markets and the quantity of raisins for which such average prices were computed. Each such report shall be submitted not later than the end of the fifth calendar day following either the date of the request by the Committee or the ending date of the period to be covered by the report, whichever is later.

(g) *Certification of report.* All reports submitted to the Committee pursuant to this part shall be dated, and certified to the United States Department of Agriculture and to the Raisin Administrative Committee as to the truthfulness, accuracy and completeness of the information shown thereon.

(h) *Reporting by non-profit cooperative associations.* Non-profit cooperative associations need not submit door tags, door receipts, weight certificates or other similar documents with its report as to raisins received or acquired from its members.

(i) *Exemption from filing report.* A handler may be relieved by the Committee of submitting any of the reports required pursuant to paragraph (b) of this section which he shall specify in a written application therefor to the Committee stating that no transactions subject to such reports are contemplated for the balance of the crop year: *Provided,* That any such exemption shall remain in effect only so long as said handler has no such transactions subject to such reports.

[27 FR 3112, Mar. 31, 1962, as amended at 28 FR 10569, Oct. 2, 1963; 29 FR 11524, Aug. 12, 1964; 30 FR 6906, May 21, 1965; 31 FR 16307, Dec. 21, 1966; 32 FR 15917, Nov. 21, 1967; 38 FR 13013, May 18, 1973; 38 FR 20237, July 30, 1973; 39 FR 24218, July 1, 1974; 42 FR 52377, Sept. 30, 1977; 49 FR 18731, May 2, 1984]

§ 989.176 Records.

Each handler shall maintain complete, accurate, and current records of all of his business affairs concerning which he is required to submit reports with the Committee, and shall maintain such records for at least two years after the termination of the crop year in which the transactions occurred.

Subpart—Supplementary Regulations

§ 989.210 Handling of varietal types of raisins acquired pursuant to a weight dockage and/or weight adjustment (moisture) system.

(a) *General.* A handler may acquire as standard raisins lots of Natural (sun-dried) Seedless, Golden Seedless, Dipped Seedless, Oleate and Related Seedless, Monukka, Sultana, Zante Currant and Muscat (including other raisins with seeds) raisins under the weight dockage and/or weight adjustment (moisture) provisions described in §§ 989.211, 989.212, and 989.213. The creditable weight of each lot of raisins acquired in this manner shall be that obtained by multiplying .the net weight of the raisins in the lot by the applicable factor(s) from the appropriate dockage and/or weight adjustment (moisture) table(s) included in those sections.

(b) *Free and reserve tonnage percentages.* Whenever free and reserve percentages are designated for raisins of the varietal types specified in paragraph (a) of this section for a crop year, such percentages shall be applicable to the creditable weight of any lot of such raisins acquired by a handler pursuant to a weight dockage and/or weight adjustment (moisture) system.

(c) *Reserve tonnage.* A handler may hold as reserve tonnage raisins, any lot, or portion thereof, of raisins of the varietal types specified in paragraph (a) of this section acquired pursuant to a weight dockage and/or weight adjustment (moisture) system: *Provided,* That only the creditable weight of such lot, or portion thereof, may be applied by the Committee against the handler's reserve tonnage obligation.

(d) *Assessments.* Assessments on any lot of raisins of the varietal types specified in paragraph (a) of this section acquired by a handler pursuant to a weight dockage and/or weight adjustment (moisture) system shall be applicable to the free tonnage portion of the creditable weight of such lot.

(e) *Payments for services on reserve tonnage.* Payment to a handler for services performed by him with respect to reserve tonnage raisins of the varietal types specified in paragraph (a) of this section acquired pursuant to a weight dockage and/or weight adjustment (moisture) system shall be made on the basis of the creditable weight of such lot and at the applicable rate specified for such services in § 989.401 of Subpart—Schedule of Payments.

(f) *Identification.* Any lot of raisins of the varietal types specified in paragraph (a) of this section acquired pursuant to a weight dockage and/or weight adjustment (moisture) system shall be so identified by the inspection service affixing to one container on each pallet, or to each bin, in such lot, a prenumbered RAC control card (to be furnished by the Committee) which shall remain affixed to the container or bin until the raisins are processed or disposed of as natural condition raisins. The control card shall only be removed by, or under the supervision of an inspector of, the inspection service, or authorized Committee personnel.

(g) *Application of dockage and/or weight adjustment (moisture) factor(s).* The weight adjustment factor for moisture shall be applied to the net weight of raisins acquired, prior to application of the dockage factor for substandard or maturity. A lot of raisins acquired which may be subject to both a substandard and maturity dockage factor shall have only the highest of the two dockage factors applied to determine the creditable weight.

[50 FR 35770, Sept. 4, 1985]

§ 989.211 Weight adjustment (moisture) system.

(a) *General.* Natural (sun-dried) Seedless, and Monukka raisins containing from 14.1 percent through 16.0 percent moisture or from 10.0 percent through 13.9 percent moisture may be acquired by a handler under a weight adjustment system. The creditable weight of each lot of raisins acquired under this adjustment system shall be obtained by multiplying the net weight of the raisins in the lot by the applicable factor prescribed in paragraph (b) or (c) of this section.

(b) *Adjustment table for Natural (sun-dried) Seedless and Monukka raisins with 14.1 percent through 16.0 percent moisture:*

Percent moisture	Adjustment factor
16.0	.980
15.9	.981
15.8	.982
15.7	.983
15.6	.984
15.5	.985
15.4	.986
15.3	.987
15.2	.988
15.1	.989
15.0	.990
14.9	.991
14.8	.992
14.7	.993
14.6	.994
14.5	.995
14.4	.996
14.3	.997
14.2	.998
14.1	.999
14.0	1.000

NOTE: No adjustment for deliveries at 14 percent and in excess of 16 percent.

(c) *Adjustment table for Natural (sun-dried) Seedless and Monukka raisins with 10.0 percent through 13.9 percent moisture:*

Percent moisture	Adjustment factor
14.0	1.000
13.9	1.001
13.8	1.002
13.7	1.003
13.6	1.004
13.5	1.005
13.4	1.006
13.3	1.007
13.2	1.008
13.1	1.009
13.0	1.010
12.9	1.011
12.8	1.012
12.7	1.013
12.6	1.014
12.5	1.015
12.4	1.016
12.3	1.017
12.2	1.018
12.1	1.019
12.0–10.0	1.020

NOTE: No adjustment for deliveries at 14 percent and below 10 percent.

[50 FR 35770, Sept. 4, 1985]

§ 989.212 Substandard dockage.

(a) *General.* Subject to prior agreement between handler and tenderer, Natural (sun-dried) Seedless, Golden Seedless, Dipped Seedless, Oleate and Related Seedless and Monukka raisins containing from 5.1 through 10.0 percent, by weight, of sustandard raisins may be acquired by a handler under a weight dockage system. A handler also may, subject to prior agreement, acquire as standard raisins any lot of Muscat (including other raisins with seeds), Sultana, and Zante Currant raisins containing more than 12 percent, by weight, of substandard raisins under a dockage system. The creditable weight of each lot of raisins acquired under the substandard dockage system shall be obtained by multiplying the applicable net weight or creditable weight (weight determined by applying the applicable weight adjustment factor for moisture), of the lot of raisins by the applicable dockage factor from the appropriate dockage table prescribed in paragraph (b) or (c) of this section.

(b) *Substandard dockage table applicable to Natural (sun-dried) Seedless, Golden Seedless, Dipped Seedless, Oleate and Related Seedless, and Monukka raisins.*

Percent substandard	Dockage factor
5.0 or less	(1)
5.1	.999
5.2	.998
5.3	.997
5.4	.996
5.5	.995

[1] No dockage.

NOTE: Percentage in excess of the last percentage shown in the table shall be expressed in the same increments as the foregoing, and the dockage factor for each such increment shall be .001 less than the dockage for the preceding increment. No dockage for deliveries in excess of 10 percent substandard.

(c) *Substandard dockage table applicable to Muscat (including other raisins with seeds), Sultana, and Zante Currant raisins.*

Percent substandard	Dockage factor
12.0 or less	(1)
12.1	.999
12.2	.998
12.3	.997
12.4	.996
12.5	.995

[1] No dockage.

NOTE: Percentage in excess of the last percentage shown in the table shall be expressed in the same increments as the foregoing, and the dockage factor for each such increment shall be .001 less than the dockage factor for the preceding increment.

[50 FR 35771, Sept. 4, 1985]

§ 989.213 Maturity dockage.

(a) *General.* Subject to prior agreement between handler and tenderer, Natural (sun-dried) Seedless, Golden Seedless, Dipped Seedless, Oleate and Related Seedless, and Monukka raisins containing from 40.0 through 49.9 percent, by weight, of well-matured or reasonably well-matured raisins may be acquired by a handler under a weight dockage system. The creditable weight of each lot of raisins acquired under the maturity dockage system shall be obtained by multiplying the applicable net weight or creditable weight (weight determined by applying the applicable weight adjustment factor for moisture) of the lot of raisins by the applicable dockage factor from the dockage table prescribed in paragraph (b) of this section.

(b) *Maturity dockage table applicable to Natural (sun-dried) Seedless, Golden Seedless, Dipped Seedless, Oleate and Related Seedless, and Monukka raisins.*

Percent well-matured or reasonably well-matured	Dockage factor
50.0 or more	(1)
49.9	.998
49.8	.996
49.7	.994
49.6	.992
49.5	.990
49.4	.988
49.3	.986
49.2	.984
49.1	.982
49.0	.980

[1] No dockage.

NOTE: Percentages less than the last percentage shown in the table shall be expressed in the same increments as the foregoing, and the dockage factor for each such increment shall be .002 less than the dockage factor for the preceding increment. No dockage shall apply to lots of raisins containing 39.9 percent or less well-matured or reasonably well-matured raisins.

[50 FR 35771, Sept. 4, 1985]

§ 989.221 Countries to which sale and export of reserve raisins may be made by handlers.

Pursuant to § 989.67(c), the Committee shall sell reserve raisins to handlers for export to all markets in the world except to the following: The United States, Canada, and Mexico and all islands adjacent to these countries, and all of the Caribbean Islands north of the 12th parallel, but not excluding those islands on the continental shelf of South America.

[48 FR 35348, Aug. 4, 1983]

NOTE: After January 1, 1979, "Budget of Expenses and Rate of Assessment" regulations (e.g., sections .300 through .399) and "Marketing percentage" regulations (e.g., sections .222 through .299) which are in effect for a year or less, will not be carried in the Code of Federal Regulations. For FEDERAL REGISTER citations affecting these regulations, see the "List of CFR Sections Affected" in this volume.

Subpart—Schedule of Payments

§ 989.401 Payments for services performed with respect to reserve tonnage raisins.

(a) *Payment for crop year of acquisition*—(1) *Receiving, storing, fumigating, and handling.* Each handler shall, beginning August 1, 1983, be compensated at the rate of $38.75 per ton (natural condition weight at the time of acquisition) for receiving, storing, fumigating, and handling the reserve tonnage raisins, as determined by the final reserve tonnage percentage, acquired during a particular crop year and held by him for the account of the Raisin Administrative Committee during all or any part of the same crop year, and released after February 13, 1984.

(2) *Inspection.* Each handler shall be reimbursed by the Committee for inspection costs applicable to the reserve tonnage raisins, as determined by the final reserve tonnage percentage, received and held by him for the account of the Committee. Such payment shall be made at the currently applicable rate per ton paid by such handler to the Inspection Service and on the quantity reported by the handler. The Committee shall pay the cost of any inspection required by it of such reserve tonnage raisins while they are being held for its account: *Provided,* That the cost of inspection of any raisins substituted, pursuant to § 989.66(b)(3), by a handler for such reserve tonnage raisins, or which he received by transfer from another handler by purchasing, as permitted pursuant to § 989.166, a portion or all of such other handler's share of an offer, shall be borne by the handler and shall not be reimbursed to him by the Committee.

(b) *Additional payment for reserve tonnage raisins held beyond the crop year of acquisition.* Additional payment for reserve tonnage raisins held beyond the crop year of acquisition shall be made in accordance with this paragraph. Each handler holding such raisins for the account of the Committee on August 15 and the following September 1 shall be compensated for storing, handling, and fumigating such raisins at the rate of $1.94 per ton per month, or any part thereof, for each month of the three-month period ending November 30, and $1.00 per ton month, or any part thereof, for each month of the next nine months. Such services shall be completed so that the Committee is assured that the raisins are maintained in good condition.

(c) *Payment of rental on boxes and bins containing raisins held beyond the crop year of acquisition.* Payment of rental on boxes and bins containing reserve tonnage raisins held beyond the crop year of acquisition shall be made in accordance with this paragraph. Each handler, producer, dehydrator, and other person who furnishes boxes or bins in which such raisins are held for the account of the Committee on August 15 and the following September 1 shall be compensated for the use of such boxes and bins. The rate of compensation shall be: For boxes, two and one-half cents per day, not to exceed a total payment of $1 per box per year, per average net weight of raisins in a sweatbox, with equivalent rates for raisins in boxes other than sweatboxes; and for bins twenty cents per day per bin, not to exceed a total of $10 per bin per year. For purposes of this paragraph, "box" means any container with a capacity of less than 1,000 pounds and "bin" means any container with a capacity of 1,000 pounds, or more. The average net weight of raisins in each type of box shall be the industry average as computed by the Committee for the box in which the raisins are so held. No further compensation shall be paid unless the raisins are so held in the boxes c . the succeeding September 1.

(d) *Payment for other services*—(1) *General.* In addition to the payments provided in paragraphs (a), (b), and (c) of this section, handlers shall be compensated for other services performed with respect to reserve tonnage raisins as set forth in this paragraph.

(2) *Transportation.* The Committee may arrange with any handler for transporting reserve tonnage raisins. Payment for such transportation shall be based on then prevailing haulage rates within the production area for the type of transportation required.

(3) *Packing.* A handler who accepts an offer by the Committee to pack reserve tonnage raisins for its account

shall be compensated for such packing in an amount determined by or acceptable to the Committee. In considering the amount of compensation to be paid, the Committee shall take into account, among other factors, the particular varietal type of raisins to be packed, the particular pack or package required, and the quantity and quality of the raisins to be packed.

(4) *Redelivery.* In the event the Committee removes reserve tonnage raisins of a previous crop year from a handler upon the request provided for in § 989.66(f) and such handler subsequently desires redelivery to him of reserve tonnage raisins for contract packing, or other purpose, he shall reimburse the Committee in advance of such redelivery for the net costs to it of the removal, storage, and redelivery of such raisins: *Provided,* That the Committee may waive payment by the handler of part or all of such costs if it determines that such waiver is reasonably necessary to the prompt and favorable disposition of the raisins involved.

[32 FR 15917, Nov. 21, 1967, as amended at 49 FR 18731, May 2, 1984]

Subpart—Conversion Factors

§ 989.601 Conversion factors for raisin weight.

The following factors for different varietal types of raisins and degrees of processing accomplished, as specified, shall be used to convert the next weight of reconditioned raisins acquired by handlers as packed raisins to natural condition weight:

Varietal type	Weight taken after—	
	Passing through stemmer and blower	Completion of processing
Natural (sun-dried) seedless	0.94	0.92
Golden seedless	.96	.95
Dipped seedless	.96	.95
Muscats (including other raisins with seeds):		
Seeded		.80
Unseeded	.94	.92
Sultana	.94	.92
Zante currant	.93	.91
Oleate and Related Seedless	.94	.92

The net weight of the raisins acquired as packed raisins shall be divided by the applicable factor to obtain the natural condition weight.

[40 FR 54768, Nov. 26, 1975, as amended at 42 FR 52378, Sept. 30, 1977; 45 FR 75165, Nov. 15, 1980; 46 FR 39121, July 31, 1981]

Subpart—Quality Control

EDITORIAL NOTE: For a nomenclature change see 44 FR 64398, Nov. 7, 1979.

§ 989.701 Minimum grade and condition standards for natural condition raisins.

Effective pursuant to § 989.58, raisins meeting the varietal standards hereinafter set forth shall be considered as standard raisins and those failing to meet such standards shall be considered as off-grade raisins. Where the raisins in any lot consist of two or more varietal types commingled within their containers, the lot shall be considered as a mixed lot and as standard raisins if they meet for each defect the most restrictive requirements for the varietal types of raisins comprising the lot. In the event layered Muscats (including other raisins with seeds) or Cluster Seedless raisins are commingled within their containers with loose Muscats (including other raisins with seeds) or loose Cluster Seedless raisins respectively, the entire lot shall be considered as loose Muscats (including other raisins with seeds) or Natural (sun-dried) Seedless raisins. The raisins shall be considered as standard raisins if the lot as a whole meets the minimum standards for loose Muscats (including other raisins with seeds) or Natural (sun-dried) Seedless raisins: *Provided,* That with respect to the requirements peculiar to a varietal type such as possessing characteristic color, flavor, or odor, the raisins shall be considered as meeting such requirements if they have been properly prepared as raisins. In each category, only those raisins which have been properly dried and cured in original natural condition, are free from active infestation, and are in such condition that they are capable of being received, stored, and packed without undue deterioration or spoil-

age, shall be considered as storable raisins.

(a) *Natural (sun-dried) Seedless and Monukka raisins.* Natural condition Natural (sun-dried) Seedless and Monukka raisins shall have been prepared from sound, wholesome, matured grapes properly dried and cured, and shall meet the following additional requirements: (1) Shall be fairly free from damage by sugaring, mechanical injury, sunburn, or other similar injury; (2) shall have a normal characteristic color, flavor, and odor of properly prepared raisins; (3) shall contain not more than 5 percent, by weight, of substandard raisins (raisins that show development less than that characteristic of raisins prepared from fairly well-matured grapes), and shall also contain at least 50 percent well-matured or reasonably well-matured raisins; (4) shall not exceed 16 percent moisture as determined by the dried fruit moisture tester method, except that there shall be no maximum moisture content for Cluster Seedless raisins; and (5) shall be of such quality and condition as can be expected to withstand storage as provided in the order and that when processed in accordance with good commercial practice will meet the minimum standards for processed raisins established by the Committee, and that with respect to Cluster Seedless raisins, in addition to the above requirements the raisins shall be fairly free from shattered (or loose end) berries, and be uniformly cured; shall contain 30 percent or more "2 Crown" or larger size berries; and shall be of such quality and condition that when processed in accordance with good commercial practice will, except for moisture content, meet the minimum standards for processed raisins established by the Committee.

(b) *Dipped Seedless, and Oleate and Related Seedless.* Natural condition Dipped Seedless, and Oleate and Related Seedless raisins shall have been prepared from sound, wholesome, matured grapes properly dried and cured, and shall meet the following additional requirements: (1) Shall be fairly free from damage by sugaring, mechanical injury, sunburn, or other similar injury; (2) shall have a normal characteristic flavor and odor of properly prepared raisins; (3) shall contain not more than 5 percent, by weight, of substandard raisins (raisins that show development less than that characteristic of raisins prepared from fairly well-matured grapes), and for the 1985–86 and subsequent crop years also contain at least 50 percent well-matured or reasonably well-matured raisins; (4) shall not exceed 14 percent moisture as determined by the dried fruit moisture tester method, (5) shall be of such quality and condition as can be expected to withstand storage as provided in the order and that when processed in accordance with good commercial practice will meet the minimum standards for processed raisins established by the Committee.

(c) *Golden Seedless.* Natural condition Golden Seedless raisins shall have been prepared from sound, wholesome, matured grapes properly dried and cured, and shall meet the following additional requirements: (1) Shall be fairly free from damage by sugaring, mechanical injury, sunburn, or other similar injury; (2) shall have a normal characteristic flavor and odor of properly prepared raisins; (3) shall contain not more than 5 percent, by weight, of substandard raisins (raisins that show development less than that characteristic of raisins prepared from fairly well-matured grapes), and for the 1985–86 and subsequent crop years also contain at least 50 percent well-matured or reasonably well-matured raisins; (4) shall not exceed 14 percent moisture as determined by the dried fruit moisture tester method, (5) shall be of such quality and condition as can be expected to withstand storage as provided in the order and that when processed in accordance with good commercial practice will meet the minimum standards for processed raisins established by the Committee; and (6) shall possess a color varying from yellowish green to dark amber or dark greenish amber with not more than 15 percent, by weight, of all the raisins being definitely dark berries. "Definitely dark berries" means raisins which are definitely darker than dark amber and characteristic of "naturally" raisined grapes.

(d) *Muscats (including other raisins with seeds).* Natural condition Muscat

raisins (including other raisins with seeds) shall have been prepared from sound, wholesome, matured grapes properly dried and cured, and shall meet the following additional requirements: (1) Shall be fairly free from damage by sugar, mechanical injury, sunburn or other similar injury; (2) shall have a normal characteristic color, flavor, and odor of properly prepared raisins and shall contain not more than 12 percent, by weight, of substandard raisins (raisins that show development less than that characteristic of raisins prepared from fairly well-matured grapes); (3) shall not exceed 16 percent moisture as determined by the dried fruit moisture tester method, except that water dipped, vine sprayed or similarly treated Muscats (including other raisins with seeds) shall not exceed 14 percent moisture, and that there shall be no maximum moisture content for layered Muscats (including other raisins with seeds); (4) the raisins shall be of such quality and condition as can be expected to withstand storage as provided in the marketing agreement and order, and that when processed in accordance with good commercial practice will meet the minimum standards for processed raisins established by the Committee, and that with respect to layered Muscats (including other raisins with seeds), in addition to the above requirements the raisins shall be fairly free from shattered (or loose end) berries; uniformly cured; 30 percent or more "3 Crown" or larger size; of such quality and condition that when processed in accordance with good commercial practice will, except for moisture content, meet the minimum standards for processed raisins established by the Committee.

(e) *Sultana Raisins.* Natural condition Sultana raisins shall have been prepared from sound, wholesome, matured grapes properly dried and cured, and shall meet the following additional requirements: (1) Shall be fairly free from damage by sugaring, mechanical injury, sunburn, or other similar injury; (2) shall have a normal characteristic color, flavor, and odor of properly prepared raisins and shall contain not more than 12 percent, by weight, of substandard raisins (raisins that show development less than that characteristic of raisins prepared from fairly well-matured grapes); (3) shall not exceed 16 percent moisture as determined by the dried fruit mositure tester method; and (4) the raisins shall be of such quality and condition as can be expected to withstand storage as provided in the marketing agreement and order, and that when processed in accordance with good commercial practice will meet the minimum standards for processed raisins established by the Committee.

(f) *Zante Currant Raisins.* Natural condition Zante Currant raisins shall have been prepared from sound, wholesome, matured grapes properly dried and cured, and shall meet the following additional requirements; (1) Shall be fairly free from damage by sugaring, mechanical injury, sunburn, or other similar injury; (2) shall have a normal characteristic color, flavor, and odor of properly prepared raisins and shall contain not more than 12 percent, by weight, of substandard raisins (raisins that show development less than that characteristic of raisins prepared from fairly well-matured grapes); (3) shall not exceed 16 percent moisture as determined by the dried fruit moisture tester method; and (4) the raisins shall be of such quality and condition as can be expected to withstand storage as provided in the marketing agreement and order, and that when processed in accordance with good commercial practice will meet the minimum standards for processed raisins established by the Committee.

[42 FR 52378, Sept. 30, 1977, as amended at 46 FR 39121, July 31, 1981; 48 FR 49215, Oct. 25, 1983; 49 FR 1669, Jan. 13, 1984; 49 FR 33994, Aug. 28, 1984; 50 FR 35771, Sept. 4, 1985]

§ 989.702 Minimum grade standards for packed raisins.

Effective pursuant to § 989.59, the minimum grade standards for packed raisins shall be as follows:

(a) *Natural (sun-dried) Seedless, Dipped Seedless, and Oleate and Related Seedless Raisins.* Packed Natural (sun-dried) Seedless, Dipped Seedless, and Oleate and Related Seedless rai-

sins shall meet the requirements of U.S. Grade C as defined in the effective United States Standards for Grades of Processed Raisins (§§ 52.1841-52.1858 of this title): *Provided,* That at least 62.5 percent, by weight, of the raisins shall be well-matured or reasonably well-matured. With respect to select-sized and mixed-sized raisin lots, the raisins shall at least meet the U.S. Grade B tolerances for pieces of stem, and underdeveloped and substandard raisins, and small (midget) sized raisins shall meet the U.S. Grade C tolerances for those factors. These requirements shall be effective November 15, 1984: *Provided,* That the tolerance for well-matured or reasonably well-matured raisins shall increase from 62.5 percent to 70 percent on November 15, 1985.

(b) *Golden Seedless Raisins.* Packed Golden Seedless raisins shall at least meet the requirements prescribed in paragraph (a) of this section, and the color requirements for "colored" as defined in said standards.

(c) *Monukka Raisins.* Packed Monukka raisins shall at least meet the requirements prescribed in paragraph (a) of this section, except that the tolerance for moisture shall be 19 percent rather than 18 percent.

(d) *Muscat (including other raisins with seeds) Raisins.* Packed Muscat (including other raisins with seeds) raisins shall at least meet the requirements of U.S. Grade C of the said standards. Layer Muscat (including other raisins with seeds) raisins shall at least meet U.S. Grade B as defined for "Layer or Cluster Raisins With Seeds" in said standards, except for the provisions therein relating to moisture content.

(e) *Sultana Raisins.* Packed Sultana raisins shall at least meet the requirements of U.S. Grade C as defined in said standards.

(f) *Zante Currant Raisins.* Packed Zante Currant raisins shall at least meet the requirements of U.S. Grade B as defined in said standards.

(g) *Cluster Seedless raisins*—(1) *Description.* Raisins referred to as "Cluster Seedless raisins" means the raisins have not been detached from the main bunch. Cluster Seedless raisins shall at least meet the requirements of Marketing Order Grade B prescribed in this paragraph. The processed raisins are prepared from clean, sound, dried grapes; are stored or cleaned, or both, and are washed with water to assure a wholesome product.

(2) *Grades.* (i) Marketing Order Grade A is a quality of Cluster Seedless raisins that have similar varietal characteristics; have a good typical color; have a good characteristic flavor; are uniformly cured and show development characteristics of raisins prepared from well-matured grapes; contain not more than 23 percent, by weight, of moisture; that not less than 30 percent, by weight, of the raisins, exclusive of stems and branches, are "2 Crown" size or larger and meet the additional requirements as outlined in the table in paragraph (2)(iv) of this paragraph.

(ii) Marketing Order Grade B is the quality of the Cluster Seedless raisins that have similar varietal characteristics; have a reasonably good typical color; have a good characteristic flavor; are uniformly cured and show characteristics of raisins prepared from reasonably well-matured grapes; contain not more than 23 percent, by weight, of moisture; that not less than 30 percent, by weight, of raisins, exclusive of stems and branches, are "2 Crown" size or larger and meet the additional requirements as outlined in the table in paragraph (2)(iv) of this paragraph.

(iii) Substandard is the quality of Cluster Seedless raisins that fail to meet the requirements of Marketing order Grade B.

(iv) Allowances for defects in Cluster Seedless raisins:

Defects	Marketing order grade A	Marketing order grade B
	Maximum (percent by weight)	
Sugared	5	10
Discolored, damaged, or moldy.	5	7
Provided these limits are not exceed:		
Damaged	3	4
Moldy	2	3
Substandard Development and Undeveloped.	2	5

Defects	Marketing order grade A	Marketing order grade B
Shattered (or loose) individual berries and small clusters of 2 or 3 berries each.	Practically free....	Reasonably free.
	Appearance or edibility of product	
Slightly discolored or damaged by fermentation or any other defect not described above.	May not be affected.	May not be more than slightly affected.
Grit, sand, or silt.....	None of any consequence may be present that affects the appearance or edibility of the product.	

(h) A handler may grind raisins which do not meet the minimum grade standards prescribed in paragraphs (a) through (g) of this section because of mechanical damage or sugaring, into a raisin paste.

[49 FR 33994, Aug. 28, 1984, as amended at 50 FR 35772, Sept. 4, 1985]

Subpart—Antitrust Immunity and Liability

§ 989.801 Restrictions applicable to committee personnel.

Members and employees of the Raisin Administrative Committee are immune from prosecution under the United States antitrust laws only insofar as their conduct in administering the Raisin Marketing Order is authorized by the Agricultural Marketing Agreement Act of 1937, 7 U.S.C. 601 *et seq.*, or the provisions of the order. Under the antitrust laws, Committee members and employees may not engage in any unauthorized agreement or concerted action that unreasonably restrains United States domestic or foreign commerce. For example, Committee members and employees have no authority to participate, either directly or indirectly, whether on an informal or formal, written or oral basis, in any bilateral or international undertaking or agreement with any competing foreign producer or seller or with any foreign government, agency, or instrumentality acting on behalf of competing foreign producers or sellers to (a) raise, fix, stabilize, or set a floor for raisin, sultana, or currant prices, or (b) limit the quantity or quality of raisins, sultanas, or currants imported into or exported from the United States. Participation in any such unauthorized agreement or joint undertaking could result in prosecution under the antitrust laws by the United States Department of Justice and/or suit by injured private persons seeking treble damages, and could also result in expulsion of members from the Committee or termination of employment with the Committee.

[46 FR 39984, Aug. 6, 1981]

Part 991—HOPS OF DOMESTIC PRODUCTION

EDITORIAL NOTE: At 50 FR 26977, July 1, 1985, the Agricultural Marketing Service (AMS) published a document which terminated Part 991, effective December 31, 1985. At 50 FR 27815, July 8, 1985 a document was published which established a salable quantity of hops and allotment percentage for the period August 1, 1985 to December 31, 1985.

At 51 FR 4887, Feb. 10, 1986, the AMS published a suspension order. That document provided:

"The Food Security Act of 1985 which was signed into law on December 23, 1985, provides that: 'The Secretary of Agriculture may not terminate any marketing order under section 8c(16) of the Agricultural Adjustment Act (7 U.S.C. 608c(16)), reenacted with amendments by the Agricultural Marketing Agreement Act of 1937, if such termination becomes effective before January 16, 1986.'

In enacting this provision, Congress intended that the Hop Marketing Order not be terminated as announced on July 1, 1985. It has, therefore, been determined that the Hop Marketing Order did not terminate and currently remains in effect."

However, because the AMS believes the provisions of the order dealing with volume limitation, pooling, and transfers, and the administrative rules and regulations which have been promulgated, obstruct, and do not tend to effectuate the declared policy of the Agricultural Marketing Agreement Act of 1937, certain sections in Part 991 have been suspended, effective February 10, 1986. For further information see 51 FR 4887, Feb. 10, 1986.

PART 993—DRIED PRUNES PRODUCED IN CALIFORNIA

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AUTHORITY: Secs. 1-19, 48 Stat. 31, as amended; 7 U.S.C. 601-674.

Subpart—Order Regulating Handling

SOURCE: 26 FR 476, Jan. 19, 1961, unless otherwise noted.

DEFINITIONS

§ 993.1 Secretary.

"Secretary" means the Secretary of Agriculture of the United States, or any other officer or employee of the United States Department of Agriculture who is or who may hereafter be, authorized to exercise the powers and to perform the duties of the Secretary under the Act.

§ 993.2 Act.

"Act" means Public Act No. 10, 73d Congress, as amended and reenacted and amended by the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 et seq.).

§ 993.3 Person.

"Person" means an individual, partnership, corporation, association, or any other business unit.

§ 993.4 Area.

"Area" means the State of California.

§ 993.5 Prunes.

"Prunes" means and includes all sun-dried or artificially dehydrated plums, of any type or variety, produced from plums grown in the area, except: (a) Sulfur-bleached prunes which are produced from yellow varieties of plums and are commonly known as silver prunes; and (b) plums which have not been dried or dehydrated to a point where they are capable of being stored prior to packaging without material deterioration or spoilage unless refrigeration or other artificial means of preservation are used, and so long as they are treated by a process which is in conformity with, or generally similar to, the processes for treatment of plums of that type which have been developed or recommended by the Food Technology Division, College of Agriculture, University of California, for the specialty pack known as "high moisture content prunes," but this exception shall not apply if and when such plums are dried to the point where they are capable of being stored without material deterioration or spoilage, refrigeration or other artificial means of preservation.

§ 993.6 Non-French prunes.

"Non-French prunes" means prunes commonly known as Imperial, Sugar, Robe de Sargent, Burton, Standard, Jefferson, Fellenberg, Italian, President, Giant, and Hungarian (Gross) produced from such varieties of plums. This definition may be modified by the committee with the approval of the Secretary.

§ 993.7 French prunes.

"French prunes" means: (a) Prunes produced from plums of the following varieties of plums: French (Prune d'Agen, Petite Prune d'Agen), Coates (Cox, Double X, Saratoga); and (b) any other prunes which possess taste, flesh texture, and other characteristics similar to those of the prunes named in this section.

§ 993.8 Natural condition prunes.

"Natural condition prunes" means prunes which have not been processed

§ 993.9 Processed prunes.

"Processed prunes" means prunes which have been cleaned, or treated with water or steam, by a handler.

§ 993.10 Standard prunes.

"Standard prunes" means any lot of natural condition prunes meeting the applicable grade and size standards prescribed pursuant to § 993.49 other than pursuant to § 993.49(c).

[26 FR 476, Jan. 19, 1961, as amended at 37 FR 861, Jan. 20, 1972]

§ 993.11 Standard processed prunes.

"Standard processed prunes" means any lot of processed prunes meeting the applicable grade and size standards prescribed pursuant to § 993.50.

§ 993.12 Substandard prunes.

"Substandard prunes" means any lot of processed or natural condition prunes failing to meet the applicable grade and size standards prescribed pursuant to §§ 993.49 and 993.50 other than pursuant to § 993.49(c).

[26 FR 476, Jan. 19, 1961, as amended at 37 FR 861, Jan. 20, 1972]

§ 993.13 Handle.

"Handle" means to receive, package, sell, consign, transport, or ship (except as a carrier of prunes owned by another person), or in any other way to place prunes in the current of the commerce within the area or from such area to any point outside thereof: *Provided*, That this term shall not include: (a) Sales or deliveries of prunes by a producer or dehydrator to a producer, dehydrator, or handler within the area; (b) the receiving of prunes by a producer or dehydrator from a producer or dehydrator; and (c) receipts, sales, or shipments of prunes already handled by another person other than pursuant to § 993.50(f).

§ 993.14 Handler

"Handler" means any person who handles prunes.

§ 993.15 Dehydrator.

"Dehydrator" means any person who produces prunes by drying or dehydrating plums by means of sun-drying or artificial heat.

§ 993.16 Producer.

"Producer" means any person who is engaged, in a proprietary capacity, in growing plums for drying or dehydrating into prunes.

§ 993.17 Ton.

"Ton" means a short ton of 2,000 pounds.

§ 993.18 Grade.

"Grade" means the classification of prunes for quality and condition according to the grading specifications established pursuant to the provisions of this subpart.

§ 993.19a Size.

"Size" means either (a) the number of prunes contained in a pound and may be referred to in terms of size ranges, or (b) the diameter of a round opening, expressed in multiples of one thirty-second of an inch, through which prunes pass freely.

[37 FR 861, Jan. 20, 1972]

§ 993.19b Undersized prunes.

"Undersized prunes" means prunes which pass freely through a round opening of a specified diameter.

[37 FR 861, Jan. 20, 1972]

§ 993.20 Crop year.

"Crop year" means the 12-month period beginning August 1 of any year and ending July 31 of the following year.

§ 993.21 Domestic.

"Domestic" means the United States, Canal Zone, Puerto Rico, Virgin Islands, and Canada.

§ 993.21a Proper storage.

"Proper storage" means storage of such character as will maintain prunes in the same condition as when received by a handler, except for normal and natural deterioration and shrinkage.

[30 FR 9798, Aug. 6, 1965]

§ 993.21b Trade demand.

(a) *Domestic trade demand.* The quantity of prunes which the commercial trade will acquire from all handlers during a crop year for distribution in domestic markets for human

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consumption as prunes and prune products.

(b) *Foreign trade demand.* The quantity of prunes which the commercial trade will acquire from all handlers during a crop year for distribution in other than domestic markets for human consumption as prunes and prune products.

[30 FR 9798, Aug. 6, 1965]

§ 993.21c Salable prunes.

"Salable prunes" means those prunes which are free to be handled pursuant to any salable percentage established by the Secretary pursuant to § 993.54, or, if no reserve percentage is in effect for a crop year, all prunes, excluding the quantity of undersized prunes determined pursuant to § 993.49(c), received by handlers from producers and dehydrators during that year.

[46 FR 61637, Dec. 18, 1981]

§ 993.21d Reserve prunes.

"Reserve prunes" means those prunes which must be withheld in satisfaction of a reserve obligation arising from application of a reserve percentage established by the Secretary pursuant to § 993.54.

[30 FR 9798, Aug. 6, 1965]

§ 993.22 Consumer package.

"Consumer package" means: (a) Any container of prunes holding less than 10 pounds of standard processed prunes or standard prunes; or (b) any container holding less than 10 pounds of prunes and other dried fruit if more than 60 percent of the net weight of mixed dried fruit in the lot consists of standard processed prunes or standard prunes.

§ 993.23 Part and subpart.

"Part" means the order regulating the handling of dried prunes produced in California, and all rules, regulations, and supplementary orders issued thereunder. This order regulating the handling of dried prunes produced in California shall be a "subpart" of such part.

PRUNE MARKETING COMMITTEE

§ 993.24 Establishment and membership.

A Prune Marketing Committee (herein referred to as the "Committee"), consisting of 22 members with an alternate member for each such member, is hereby established to administer the terms and provisions of this part, of whom with their respective alternates, 14 shall represent producers, 7 shall represent handlers, and 1 shall represent the public. Committee membership shall be allocated in accordance with the following grouping with the alternate positions identically allocated:

(a) Three handler members to represent handlers who are cooperative marketing associations of producers (referred to in this part as "cooperative handlers");

(b) Three handler members to represent handlers other than cooperative handlers (referred to in this part as "independent handlers");

(c) One handler member to represent handlers who are cooperative handlers or independent handlers, whichever of such handlers handled as first handlers more than 50 percent of the prunes handled by all handlers during the crop year preceding the year in which nominations are made;

(d) Fourteen producer members to be selected from and to represent producers who are members of cooperative marketing associations (referred to in this part as "cooperative producers") and producers other than "cooperative producers" (referred to in this part as "independent producers"); the number of the producer members for the cooperative producer group or the independent producer group, as the case may be, shall be in the same proportion, as near as practicable, to the total of 14, as the tonnage of prunes handled by the respective group of cooperative handlers or independent handlers as first handlers during the crop year preceding the year in which nominations are made is to the total tonnage of prunes handled by all handlers as first handlers.

(e) The public member and alternate shall have no financial interest in the prune industry.

[26 FR 476, Jan. 19, 1961, as amended at 46 FR 61636, Dec. 18, 1981]

§ 993.25 Term of office.

The term of office of members, and their respective alternates, shall be

two years, ending on May 31 of even numbered years, and any later date which may be necessary for the selection and qualification of their respective successors.

§ 993.26 Selection.

Selection of members of the committee, and their respective alternates, shall be made in the appropriate number specified in § 993.24, by the Secretary from nominees nominated pursuant to this part or, in the discretion of the Secretary, from other eligible persons.

§ 993.27 Eligibility.

Producer members of the Committee shall be at the time of their selection, and during their term of office, producers in the group, for which selected and if to represent a district also producers in the district for which selected, and, except for producer members representing cooperative producers, shall not be engaged in the handling of prunes either in a proprietary capacity or as a director, officer, or employee. Handler members of the Committee shall be handlers in the group they represent or directors, officers, or employees of such handlers. These eligibility requirements shall not apply to the public member and alternate member.

[46 FR 61636, Dec. 30, 1981]

§ 993.28 Nominees.

(a) For the purpose of obtaining nominations for producer members to represent independent producers, the Committee shall, with the approval of the Secretary, divide the area into districts giving, insofar as practicable, equal representation to numbers of independent producers and production of prune tonnage by such producers. The number of districts shall be equal to the number of such producer members or seven, whichever is the lesser. Candidates for nomination by independent producers from the various districts shall be obtained at meetings convened by the committee. Following such meetings, the committee shall prepare a separate ballot for each of the districts, or a joint ballot for two or more districts, containing (1) the names of the candidates for each district involved and (2) provision for write-in candidates. The ballot shall be mailed to each independent producer of record in each district. The voting procedure (including the casting of the ballot by mail addressed to the committee), and tabulation of votes shall be in accordance with rules and regulations prescribed by the committee, with the approval of the Secretary. Each voter shall be entitled to cast only one vote for a member nominee and only one vote for an alternate member nominee in a district in which he is a producer, and no voter shall vote for candidates in more than one district. In case he is a producer in more than one district, he shall elect in which of such districts he will vote and notify the committee as to his choice. Whenever the number of producer members to represent independent producers during the ensuing term of office is to exceed seven, one nominee shall be nominated by independent producers in each of the seven districts and an additional nominee for each member in excess of the seven members shall be nominated, without reference to districts, by such seven nominees. The committee shall recommend the establishment of districts, or any changes therein, to the Secretary prior to January 31 of each year in which nominations are made.

(b) Before April 16 of each even-numbered year nominations of producer members to represent cooperative producers and handler members to represent cooperative handlers shall be submitted to the Secretary by cooperative marketing associations engaged in the handling of prunes. The number of cooperative producer members and handler members to be nominated by each cooperative marketing association shall bear, as near as practicable, the same percentage as each cooperative marketing association's tonnage of prunes handled as first handler thereof is to the total tonnage handled by all cooperative marketing associations during the preceding crop year.

(c) In any year in which nominations are made following a crop year during which the tonnage of prunes handled by independent handlers as first han-

dlers exceeded the tonnage of prunes handled by cooperative handlers as first handlers, nominees for member positions to represent independent handlers shall be nominated as follows:

(1) Each of the two independent handlers who handled during such preceding crop year, the two largest percentages of the prune tonnage handled by all independent handlers shall nominate from their respective organizations, one nominee for a handler member and one for an alternate member;

(2) Three independent handlers who handled during such preceding crop year the next three largest percentages of the prune tonnage handled by all independent handlers shall nominate from among their organizations, one nominee for a handler member and one for an alternate member;

(3) All other independent handlers who handled the remaining percentage of such prune tonnage shall nominate from their organizations, one nominee for a handler member and one for an alternate member.

In any year in which nominations are made following a crop year during which the tonnage of prunes handled by cooperative handlers as first handlers exceeded the tonnage of prunes handled by independent handlers as first handlers, nominees for two member and alternate positions to represent the independent handlers referred to in paragraph (c)(1) of this section shall be nominated in accordance with said paragraph (c)(1), and one nominee for the member and one for the alternate position to represent all other independent handlers shall be nominated by the handlers referred to in paragraph (c)(2) and (3) of this section and the votes of such handlers shall be weighted by the tonnage of prunes handled during the preceding crop year by the respective handlers.

(d) The committee shall establish with the approval of the Secretary, the procedures by which such nominations, other than by cooperative marketing associations engaged in the handling of prunes, shall be obtained and shall submit such nominations to the Secretary before April 16 of the year in which nominations are made. In the event the committee determines that any nominating procedure specified in this section does not result in equitable representation, it may establish, with the prior approval of the Secretary, such modifications as will tend to assure such representation.

(e) The producer and handler members of the Committee selected for a new term of office shall nominate a public member and alternate member at the first meeting following their selection.

[31 FR 9713, July 19, 1966, as amended at 46 FR 61636, Dec. 18, 1981]

§ 993.29 Alternates.

An alternate for a member of the committee shall act in the place and stead of such member (a) during his absence, and (b) in the event of his removal, resignation, disqualification, or death, until a successor for such member's unexpired term has been selected and has qualified. Except as otherwise specifically provided in this subpart the provisions of this part applicable to members also apply to alternate members.

§ 993.30 Failure to nominate.

If a nomination for any position on the committee is not received by the Secretary by May 1, the Secretary may select an eligible individual without regard to nominations.

§ 993.31 Acceptance.

Each person selected as a member or alternate member of the committee shall, prior to serving on the committee, qualify by filing with the Secretary a written acceptance within 15 days after receiving notice of his selection.

§ 993.32 Vacancies.

In the event of any committee vacancy occasioned by the removal, resignation, disqualification, or death of any member, or in the event of the failure of any person selected as a member or alternate member to qualify, a successor for the unexpired term shall be nominated within 60 calendar days thereof. Such nominations shall be made in the manner provided for in this subpart, insofar as applicable, except that nominations of nominees

for a producer member position to represent independent producers may, at the discretion of the committee, be made to the committee by the incumbent producer members of the committee who represent independent producers.

§ 993.33 Voting procedure.

Decisions of the Committee shall be by majority vote of the members present and voting and a quorum must be present: *Provided,* That decisions on marketing policy, grade or size regulations, pack specifications, salable and reserve percentages, and on any matters pertaining to the control or disposition of reserve prunes or to prune plum diversion pursuant to § 993.62, including any delegation of authority for action on such matters and any recommendation of rules and procedures with respect to such matters, including any such decision arrived at by mail or telegram, shall require at least 14 affirmative votes. A quorum shall consist of at least 13 members of whom at least 8 must be producer members and at least 4 must be handler members. Except in case of emergency, a mimimum of 5 days notice must be given with respect to any meeting of the Committee. In case of an emergency, to be determined within the discretion of the chairman of the Committee, as much notice of a meeting as is practicable in the circumstances shall be given. The Committee may vote by mail or telegram upon due notice to all members, but any proposition to be so voted upon first shall be explained accurately, fully, and identically by mail or telegram to all members. When any proposition is submitted to be voted on by such method, one dissenting vote shall prevent its adoption.

[46 FR 61637, Dec. 18, 1981]

§ 993.34 Expenses.

The members of the committee, and alternates when acting as members, or when alternates' expenses are authorized by the committee, shall serve without compensation but shall be allowed their expenses.

[30 FR 9798, Aug. 6, 1965]

§ 993.35 Powers.

The committee shall have the following powers:

(a) To administer the terms and provisions of this subpart;

(b) To make rules and regulations to effectuate the terms and provisions of this subpart;

(c) To receive, investigate, and report to the Secretary complaints of violations of this subpart; and

(d) To recommend to the Secretary amendments to this subpart.

§ 993.36 Duties.

The committee shall have, among others, the following duties:

(a) To act as intermediary between the Secretary and any producer, dehydrator, or handler;

(b) To keep minutes, books, and other records which shall clearly reflect all of its acts and transactions, and such minutes, books, and other records shall be subject to examination by the Secretary at any time;

(c) To make, subject to the prior approval of the Secretary, scientific and other studies, and assemble data on the producing, handling, shipping, and marketing conditions relative to prunes, which are necessary in connection with the performance of its official duties;

(d) To select, from among its members a chairman and other appropriate officers, and to adopt such rules and regulations for the conduct of the business of the committee as it may deem advisable;

(e) To appoint or employ such other persons as it may deem necessary, and to determine the salaries and define the duties of such persons;

(f) To submit to the Secretary not later than the fourth Tuesday of July of each year, a budget of its anticipated expenditures and the recommended rate of assessment for the ensuing crop year, and the supporting data therefor;

(g) To submit to the Secretary such available information with respect to prunes as the committee may deem appropriate, or as the Secretary may request;

(h) To prepare and submit to the Secretary quarterly statements of the

financial operations of the committee, exclusive of reserve prune operations, and to make such statements, together with the minutes of the meetings of said committee, available for inspection at the offices of the committee by producers, dehydrators, and handlers;

(i) To prepare and submit to the Secretary annually, as soon as practicable after the end of each crop year and at such other times as the committee may deem appropriate or the Secretary may request, a statement of the committee's financial operations with respect to reserve prunes for such crop year and to make such statement available at the offices of the committee for inspection by producers, dehydrators, and handlers;

(j) To cause the books of the committee to be audited by a certified public accountant at least once each crop year, and at such other times as the committee may deem necessary or as the Secretary may request, and two copies of each such audit report shall be submitted to the Secretary and a copy which does not contain confidential data shall be available for inspection at the offices of the committee, by producers, dehydrators, and handlers;

(k) To give the Secretary the same notice of meetings of the committee as is given to the members of the committee;

(l) To give producers, dehydrators, and handlers reasonable advance notice of meetings of the committee, and to maintain all such meetings open to such persons;

(m) To investigate compliance with the provisions of this subpart and with any rules and regulations established pursuant to such provisions; and

(n) To establish, with the approval of the Secretary, such rules and procedures relative to administration of this subpart as may be consistent with the provisions contained in this subpart and as may be necessary to accomplish the purposes of the act and the efficient administration of this subpart.

[30 FR 9798, Aug. 6, 1965, as amended at 37 FR 861, Jan. 20, 1972]

§ 993.37 Research and development.

The committee, with the approval of the Secretary, may establish or provide for the establishment of marketing research and development projects designed to assist, improve, or promote the marketing, distribution, and consumption of prunes. The expense of such projects shall be paid from funds collected pursuant to § 993.81.

Marketing Policy

§ 993.41 Marketing policy.

(a) On or before the first Tuesday of each July, the committee shall prepare and submit to the Secretary a report setting forth its recommended marketing policy for the ensuing crop year. If it becomes advisable to modify such policy, because of changed demand, supply, or other conditions, the committee shall formulate a new policy and shall submit a report thereon to the Secretary. Notice of the committee's marketing policy, and of any modifications thereof, shall be given promptly by reasonable publicity to producers, dehydrators, and handlers.

(b) In formulating its marketing policy for the ensuing crop year, the committee shall consider and shall include in its report to the Secretary, the following estimates (natural condition basis) and recommendations:

(1) The carryover of salable prunes as of August 1;

(2) The carryover of reserve prunes as of August 1;

(3) The grade and size composition of the salable and reserve carryovers;

(4) The quantity of prunes to be produced without regard to possible diversions of prune plums by producers;

(5) The probable quality and prune sizes in the crop;

(6) The domestic trade demand by uses of prunes;

(7) The foreign trade demand by countries or groups of countries;

(8) The desirable carryout of salable prunes at the end of the ensuing crop year;

(9) The quantity of undersized prunes in the crop, itemized as to French prunes and non-French prunes;

(10) The quantity of prunes to be withheld as reserve prunes so as to protect against errors of estimation and permit orderly marketing of the supply;

(11) The recommended salable and reserve percentages;

(12) The quantity of prune plums, dried weight basis, deemed desirable to be diverted pursuant to § 993.62;

(13) Any recommended change in regulations pursuant to §§ 933.49 to 993.53, inclusive;

(14) The probable assessable tonnage for the purposes of § 993.81; and

(15) The current prices for prunes, the trend and level of consumer income, whether producer prices are likely to exceed parity, and such other factors as may have a bearing on the marketing of prunes or the administration of this part.

[30 FR 9798, Aug. 6, 1965, as amended at 37 FR 862, Jan. 20, 1972]

Prohibition on Handling

§ 993.48 Regulation.

No handler shall handle prunes except in accordance with the provisions of this part.

[30 FR 9799, Aug. 6, 1965]

Grade and Size Regulations

§ 993.49 Incoming regulation.

(a) No handler shall receive prunes from producers or dehydrators, other than substandard prunes and undersized prunes, unless such prunes meet the minimum standards for natural condition prunes set forth in § 993.97 (Exhibit A), or as such standards may be modified, or the more restrictive grade regulation established pursuant to this section, and then in effect: *Provided,* That no handler shall receive any prunes (including substandard prunes and undersized prunes) from producers or dehydrators unless such prunes have been properly dried and cured in original natural condition, without the addition of water, and are free from active insect infestation, so that they are capable of being received, stored, and packed without material deterioration or spoilage. Any "high moisture content prunes," as described in the exception in § 993.5(b), in the possession of a handler, shall be held separate and apart from any prunes held by him. If such "high moisture content prunes" are dried or dehydrated to a point where they are capable of being stored, without material deterioration or spoilage, unrefrigerated or not otherwise artificially preserved, they shall be deemed, at that time, to have been received by such handler as prunes, and shall be subject to all of the conditions and restrictions of this subpart.

(b) The Secretary, on the basis of a recommendation of the committee or other information, may establish size regulations or more restrictive grade regulations with resepct to prunes that may be received by a handler from producers and dehydrators whenever he finds that such action would tend to effectuate the declared policy of the act.

(c) In no crop year shall a handler receive from producers or dehydrators prunes, other than as undersized prunes, which pass freely through a round opening with a diameter as follows: For French prunes 23/32 of an inch, and for non-French prunes 28/32 of an inch: *Provided,* That the Secretary upon a recommendation of the Committee, may establish larger openings whenever it is determined that supply conditions for a crop year warrant such regulation. The quantity of undersized prunes in any lot received by a handler from a producer or dehydrator shall be determined by the inspection service and entered on the applicable inspection certificate.

[26 FR 476, Jan. 19, 1961, as amended at 37 FR 862, Jan. 20, 1972; 46 FR 61637, Dec. 18, 1981]

§ 993.50 Outgoing regulation.

(a) Except as otherwise specifically provided, no handler shall ship or otherwise make final disposition of prunes which fail to meet the applicable minimum standards set forth in § 993.97 (Exhibit A), or as such standards may be modified, for standard prunes or standard processed prunes.

(b) The Secretary, on the basis of a recommendation of the committee or other information, may establish size regulations, pack specifications, or more restrictive grade regulations with respect to prunes that may be shipped or otherwise disposed of by a handler if such action would tend to effectuate the declared policy of the act. If a

more restrictive grade regulation is established in connection with § 993.97 (Exhibit A) it shall insofar as practicable apply comparably to both natural condition prunes and processed prunes. When pack specifications are in effect, no handler shall ship prunes in consumer packages, unless such prunes are identified by an appropriate label, seal, stamp, or tag affixed to such container by the handler showing the size of prunes in the lot from which the container was packed. In order to effectuate such orderly marketing of prunes as will be in the public interest, whether prices are above or below parity, no handler shall use descriptive terms in a manner inconsistent with that set forth in this subpart or in any pack specifications or other regulation issued by the Secretary pursuant to this subpart.

(c) Non-French prunes: No handler shall ship or otherwise make final disposition of any lot of standard prunes or standard processed prunes of the non-French varieties or any lot which includes non-French prunes in excess of a tolerance to be prescribed by the Secretary on recommendation of the Committee, unless the average count of such non-French prunes contained in any such lot is 40 or less per pound. However, under safeguards to be established by the Committee, any lot containing non-French prunes with an average size count of more than 40 prunes per pound may be shipped to or disposed of in prune product outlets in which they lose their form and character as prunes by conversion prior to consumption. A tolerance as to the permitted deviation of sizes about the average count shall be prescribed by the Secretary, upon recommendation of the Committee.

(d) French prunes: No handler shall ship or otherwise make final disposition of any lot of French prunes for human consumption as prunes, or any lot of mixed dried fruit containing French prunes for human consumption as mixed dried fruit, unless the average count of French prunes contained in any such lot is 100 or less per pound. However, under safeguards to be established by the Committee, any lot containing French prunes with an average size count of more than 100 prunes per pound may be shipped to or disposed of in prune product outlets in which they lose their form and character as prunes by conversion prior to consumption. In determining whether any such lot conforms to this minimum size requirement, the following tolerance shall apply: In a sample of 100 ounces, the count per pound of 10 ounces of the smallest prunes shall not vary from the count per pound of 10 ounces of the largest prunes by more than 45 points. The Secretary may, upon the basis of the recommendation and information submitted by the Committee and other available information, modify this tolerance for uniformity of size.

(e) No handler shall ship or otherwise make final disposition of any lot of substandard prunes except for use as prune products in which the prunes lose their form and character as prunes by conversion prior to consumption, or for use in non-human consumption outlets: *Provided,* That any such prunes which are shipped or otherwise disposed of for human consumption shall meet the minimum standards prescribed in II C (1), (2), and (3) of § 993.97 or as such standards as may pursuant to § 993.52 be modified. The committee shall issue any such rules and regulations as may be necessary to insure such uses.

(f) Notwithstanding the restrictions contained in this section, any handler may transfer prunes from one plant owned by him to another plant owned by him within the area without having an inspection made as provided for in § 993.51. Any handler may ship prunes from his plant to another handler's plant within the area without having an inspection made as provided for in § 993.51, but a report of such interhandler transfer shall be made promptly by the transferring handler to the committee. The receiving handler shall, before shipping or otherwise making final disposition of such prunes, comply with the requirements of this section and of § 993.51.

(g) No handler shall ship or otherwise dispose of, for human consumption, the quantity of prunes determined by the inspection service pursuant to § 993.49(c) to be undersized

prunes. However, such handler may, at the direction and under the supervision of the Committee, dispose of such quantity of prunes in nonhuman consumption outlets. Prunes so disposed of shall be of the same variety as, and reasonably comparable in size, to such undersized prunes. The handler shall cause the inspection service to make a determination whether the prunes disposed of by the handler in nonhuman consumption outlets meet such requirements. In making the determination with respect to comparability in size, the inspection service shall apply a tolerance permitting a deviation from the size of the applicable opening established pursuant to § 993.49(c). Any such tolerance, together with any rules and regulations to insure proper disposition of the prunes and that such prunes are reasonably comparable to the undersized prunes so received, shall be established by the Committee with the approval of the Secretary. The quantity of prunes determined pursuant to § 993.49(c) shall not be deemed to be within the handler's quota for salable prunes fixed by the Secretary within the meaning of section 8a(5) of the Act.

[26 FR 476, Jan. 19, 1961, as amended at 37 FR 862, Jan. 20, 1972]

§ 993.51 Inspection and certification.

Each handler shall at his own expense, before or upon the receiving, and before the shipping or disposing of prunes, cause an inspection to be made of such prunes to determine whether they meet the applicable grade and size requirements or the pack specifications, including labeling, effective pursuant to this part. Such handler shall obtain a certificate that such prunes meet the aforementioned applicable requirements and shall submit such certificate, or cause it to be submitted, to the committee. Acceptable certificates shall be those issued by inspectors of the Dried Fruit Association of California. The Secretary may designate another inspection service in the event the services of the Association prove unsatisfactory.

§ 993.52 Modification.

Minimum standards, pack specifications or size regulations, including the openings prescribed in § 993.49(c), may be modified by the Secretary, on the basis of a recommendation of the committee or other information, whenever he finds that such modification would tend to effectuate the declared policy of the act.

[26 FR 476, Jan. 19, 1961, as amended at 37 FR 862, Jan. 20, 1972]

§ 993.53 Above parity situations.

The minimum standards, the minimum sizes, including the minimum undersized regulation in § 933.49(c), and the provisions of this part relating to administration shall continue in effect irrespective of whether the estimated season average price for prunes is in excess of the parity level specified in section 2(1) of the act.

[46 FR 61637, Dec. 18, 1981]

Reserve Control

Source: 30 FR 9799, Aug. 8, 1965, unless otherwise noted.

§ 993.54 Establishment of salable and reserve percentages.

Whenever the Secretary finds, from the recommendations and supporting information supplied by the committee, or from any other available information, that to establish the percentages of prunes for any crop year which shall be salable prunes and reserve prunes, respectively, or to modify the previously established percentages, would tend to effectuate the declared policy of the act, he shall establish or modify such percentages. The salable and reserve percentages when applied to the natural condition weight of prunes, excluding the quantity of undersized prunes determined pursuant to § 993.49(c), received during the crop year by a handler from producers and dehydrators, plus that diverted tonnage (dried weight natural condition prune basis) on diversion certificates issued pursuant to § 993.62 and credited to or held by him, shall determine the weight of each handler's receipts which are salable prunes and reserve prunes. The total of the salable and reserve percentages shall equal 100 percent. A cooperative marketing association may concentrate the prunes of

its producer members before applying the salable and reserve percentages.

[30 FR 9799, Aug. 8, 1965, as amended at 37 FR 862, Jan. 20, 1972]

§ 993.55 Application of salable and reserve percentages after end of crop year.

The salable and reserve percentages established for any crop year shall remain in effect after that crop year until salable and reserve percentages are established for another crop year. After such percentages are established, all reserve obligations shall be adjusted to the newly established percentages.

[46 FR 61637, Dec. 18, 1981]

§ 993.56 Reserve obligation.

Whenever salable and reserve percentages are in effect for any crop year, the reserve obligation of a handler shall approximate the average marketable content of the handler's receipts and shall be a weight of natural condition prunes equal to the reserve percentage applied to the natural condition weight of prunes, excluding the quantity of undersized prunes determined pursuant to § 993.49(c), such handler receives during the crop year from producers and dehydrators plus that diverted tonnage (dried weight natural condition prune basis) on diversion certificates credited to or held by him which were issued pursuant to § 993.62. However, if the committee determines the requirement as to setaside reflecting average marketable content of receipts is not essential to achieve program objectives for the crop of a particular season, it may be eliminated for that season by the committee, with the approval of the Secretary. As a prerequisite for making this determination, the committee must find that the resultant setaside procedures assure that the trade demand for manufacturing prunes, as well as prunes for consumption as prunes, will be met. The salable prunes permitted to be disposed of by any handler in accordance with the provisions of this part shall be deemed to be that handler's quota fixed by the Secretary within the meaning of section 8a(5) of the act.

[30 FR 9799, Aug. 8, 1965, as amended at 37 FR 862, Jan. 20, 1972]

§ 993.57 Holding requirement and delivery.

Each handler shall at all times, hold, in his possession or under his control, in proper storage for the account of the committee, free and clear of all liens, the quantity of prunes necessary to meet his reserve obligation, less any quantity: (a) For which he has a temporary deferment pursuant to § 993.58(a); (b) of prune plums (dried weight natural condition basis) diverted pursuant to § 993.62 as shown on diversion certificates held by him, or credited by the committee against his reserve obligation; (c) disposed of by him under a sales contract of the committee; (d) delivered by him to the committee, or to a person designated by it, pursuant to its instructions; and (e) for which he is otherwise relieved by the committee of such responsibility to so hold prunes. No handler may transfer a reserve obligation but any handler may, upon notification to the committee arrange to hold reserve prunes on the premises of another handler or in approved commercial storage, under conditions of proper storage. The committee may, after giving reasonable notice, require a handler to deliver to it, or to a person designated by it, f.o.b. handler's warehouse or point of storage, reserve prunes held by him. The committee may require that such delivery consist of natural condition prunes or it may arrange for such delivery to consist of processed prunes.

§ 993.58 Deferment of time for withholding.

(a) Compliance by any handler with the requirement of § 993.57 for withholding reserve prunes may be temporarily deferred to any date desired by the handler, but not later than November 15 of the crop year, upon the execution and delivery by such handler to the committee of a written undertaking that on or prior to the desired date he will have fully satisfied his holding requirement. Such undertaking shall be secured by a bond or bonds to be filed with and acceptable to the committee in the amount or

amounts specified, conditioned upon full compliance with such undertaking.

(b)(1) Each bond shall be provided by and at the handler's expense, with a surety or sureties acceptable to the committee, and shall be in an amount computed by multiplying the pounds of natural condition prunes for which deferment is desired by the bonding rate. Such bonding rate shall be established by the committee at a level sufficient to achieve the objectives of this part.

(2) In case a handler defaults in meeting his deferred withholding requirement, any funds collected by the committee from the bonding company through such default shall be used by the committee to purchase from handlers a quantity of natural condition prunes, up to but not exceeding the quantity on which default occurred. Purchases shall be made from prunes with respect to which the reserve obligation has been met, and shall be of grades, varieties, or sizes and in such containers as the committee specifies in consideration of available reserve prune outlets. Purchases shall be at prices determined to be appropriate by the committee and if more prunes are offered than required by the committee, it shall make the purchases from various handlers as nearly as practicable in proportion to the quantity of their respective offerings at the same price. The committee shall dispose of the prunes acquired as soon as practicable in the most favorable reserve prune outlets and shall deposit the proceeds from such sales, less committee expenses in connection with such transaction, with reserve pool funds for distribution to equity holders.

(3) If for any reason the committee is unable to purchase a quantity of prunes as large as the quantity of reserve prunes in default by the handler, any remaining balance of funds received because of the default less expenses of the committee, shall be deposited with reserve pool funds for distribution to equity holders.

(c) A handler who has defaulted on his bond shall be credited on his reserve obligation with, and his holding requirement reduced by, that quantity of prunes represented by the sums collected but not more than the extent of his default.

§ 993.59 Payment to handlers for services.

The committee shall pay handlers for necessary services rendered by them in connection with reserve prunes including, but not limited to, inspection, receiving, storing, grading, and fumigation, in accordance with a schedule of payments and conditions established by the Secretary after recommendation by the committee.

Producer Diversion

§ 993.62 Diversion privileges.

(a) *Prune plums.* The words "prune plums" as used in this section mean plums of a variety used in the production of prunes.

(b) *Voluntary principle.* No producer shall be required to divert all or any portion of the prune plums produced by him.

(c) *Authorization.* If, on the basis of a committee recommendation for diversion operations, the availability of governing rules and procedures established by the Secretary after recommendation of the committee, and other information, the Secretary concurs that diversion operations should be permitted, he shall authorize such operations.

(d) *Diversion certificates.* After diversion operations are authorized, and subject to the applicable rules and procedures, any producer may divert prune plums of his own production for eligible purposes and receive from the committee a diversion certificate therefor: *Provided,* That diversion certificates for prune plums diverted by producer members of a cooperative marketing association shall be issued by the committee to the association if it so requests. To the extent permitted by the rules and procedures, the certificate may be submitted to any handler in lieu of reserve prunes and to the same extent the certificate shall entitle the handler to satisfy his reserve obligation. Only to the extent permitted by the rules and procedures, diversion certificates may be transferable among producers and handlers.

(e) *Eligible diversions.* Within such restrictions as may be prescribed in

rules and procedures, diversion may be authorized for such dispositions as are not competitive with the normal marketing of prunes and prune products. Such eligible diversions may include: (1) Disposal of prune plums for nonhuman use; (2) leaving prune plums unharvested; and (3) such other methods of diversion as may be authorized. No diversion certificate shall be issued by the committee for prune plums which would not, under normal producer practices, be dried and delivered to a handler.

(f) *Nonparticipation in pool proceeds.* Any prune plums diverted pursuant to this section shall not be included in any reserve pool.

(g) *Payment of costs.* Prior to the issuance of a diversion certificate to a producer or a cooperative marketing association, the producer or association shall pay to the committee fees established to cover costs pertaining to the diversion.

[30 FR 9800, Aug. 6, 1965]

DISPOSITION OF RESERVE PRUNES

§ 993.65 Disposition of reserve prunes.

(a) *Committee's right of disposition.* The committee shall have the power and authority to sell or dispose of any and all reserve prunes (1) to meet demand either (i) as domestic trade demand, or (ii) as foreign trade demand, or (2) for use in any outlet, defined in rules and procedures, established by the Secretary after recommendation of the committee, noncompetitive with normal outlets for salable prunes.

(b) *Methods of disposition.* The committee may, for any of the purposes of § 993.65(a), offer to sell and sell reserve prunes to handlers for disposition or sale by them in specified outlets. Sale of reserve prunes by the committee to any handler for resale in such outlets or for resale to other persons for sale in such outlets shall be governed by the provisions of a sales agreement, executed by the handler with the committee. The committee may refuse to sell reserve prunes to any handler if the handler violates the terms and conditions of the agreement or other provisions of this part. The committee may sell reserve prunes into any outlet in which direct selling is determined to be more appropriate.

(c) *Offers to sell reserve prunes.* No offer to sell reserve prunes either to handlers or to other persons shall be made by the committee until 5 days (exclusive of Saturdays, Sundays, and holidays) have elapsed from the time it files with the Secretary complete information as to the terms and conditions of the proposed offer including the basis for determining the handlers' shares: *Provided,* That at any time prior to the expiration of the 5-day period the offer may be made upon the committee receiving from the Secretary notice that he does not disapprove it.

(d) *Transfer of shares.* No handler may transfer a reserve obligation. However, any handler who is authorized by the committee to dispose of reserve prunes may arrange with another handler to dispose of his share of reserve prunes through such other handler. In that event, credit for the reserve disposition shall go to the handler whose reserve prunes are used.

(e) *Distribution of proceeds.* Expenses incurred by the committee for the receiving, handling, holding, or disposing of any quantity of reserve prunes shall be charged against the proceeds of sales of such prunes. Net proceeds from the disposition of reserve prunes shall be distributed by the committee either directly, or through handlers as agents of the committee, under safeguards to be established by the committee, to persons in proportion to their contributions thereto, or to their successors in interest, with appropriate grade and size differentials as established by the committee. Progress payments may be made by the committee as sufficient funds accumulate. Distribution of the proceeds in connection with the reserve prunes contributed by a cooperative marketing association shall be made to such association, if it so requests.

[30 FR 9800, Aug. 6, 1965]

REPORTS AND BOOKS AND OTHER RECORDS

§ 993.71 Confidential information.

All reports and records furnished or submitted by handlers to the committee which include data or information constituting a trade secret or disclosing of the trade position, financial condition, or business operations of the particular handler from whom received shall be received by, and at all times kept in the custody and under the control of one or more employees of the committee, who shall disclose such information to no person except the Secretary. Notwithstanding the above provisions of this section, information may be disclosed to the committee when reasonably necessary to enable the committee to carry out its functions under this subpart.

§ 993.72 Reports of acquisitions, sales, uses, and shipments.

Each handler shall file such reports of his acquisitions, sales, uses, and shipments of prunes, as may be requested by the committee.

§ 993.73 Other reports.

Upon the request of the committee, each handler shall furnish such other reports and information as are needed to enable the committee to perform its functions under this subpart.

§ 993.74 Records.

Each handler shall maintain such records of prunes received, held and disposed of by him, as are prescribed by the committee and needed by it to perform its functions under this subpart. Such records shall be retained for at least two years beyond the crop year of their applicability.

§ 993.75 Verification of reports.

For the purpose of checking and verifying reports filed by handlers or the operation of handlers under the provisions of this subpart, the Secretary, and the Committee through its duly authorized agents, shall have access to any premises where prunes may be held by any handler and at any time during reasonable business hours, shall be permitted to inspect any prunes so held by such handler and any and all records of such handler with respect to the holding or disposition of all prunes which may be held or which may have been disposed of by him.

[37 FR 362, Jan. 20, 1972]

EXPENSES AND ASSESSMENTS

§ 993.80 Expenses.

The committee is authorized to incur such expenses as the Secretary finds are reasonable and likely to be incurred by it during each crop year for the maintenance and functioning of the committee and for such other purposes as the Secretary may, pursuant to the provisions of this subpart, determine to be appropriate.

§ 993.81 Assessments.

(a) Each handler shall pay to the committee, upon demand, with respect to all salable prunes handled by him as the first handler thereof, his pro rata share of all expenses which the Secretary finds are reasonable and likely to be incurred by the committee during each crop year. Each handler's pro rata share shall be the rate of assessment per ton fixed by the Secretary. At any time during or after a crop year the Secretary may increase the rate of assessment to cover unanticipated expenses of the committee or a deficit in assessable tonnage.

(b) In order to provide funds to carry out the functions of the committee, the committee may accept advance payments from any handler to be credited toward such assessments as may be levied pursuant to this section against the respective handler.

(c) Any money collected as assessments during any crop year and not expended in connection with the committee's operations may be used by the committee for a period of five months subsequent to such crop year. At the end of such period the committee shall, from funds on hand, refund or credit to handler accounts the aforesaid excess. Each handler's share of such excess funds shall be the amount of assessments he has paid in excess of his pro rata share of the actual net expenses of the committee for the preceding crop year. Any

money collected from assessments hereunder and remaining unexpended in the possession of the committee at the termination of this part, shall be distributed in such manner as the Secretary may direct: *Provided*, That to the extent practical, such funds shall be returned pro rata to the persons from whom such funds were collected.

[26 FR 476, Jan. 19, 1961, as amended at 30 FR 9800, Aug. 6, 1965]

§ 993.82 Funds.

All funds received by the committee pursuant to the provisions of this part shall be used solely for authorized purposes. The Secretary may, at any time, require the committee or its members and alternate members to account for all receipts and disbursements.

MISCELLANEOUS PROVISIONS

§ 993.83 Rights of the Secretary.

The members of the committee (including successors or alternates) and any agent or employee appointed or employed by the committee, shall be subject to the removal or suspension by the Secretary, in his discretion, at any time. Each and every decision, determination, or other acts of the committee shall be subject to the continuing right of the Secretary to disapprove of the same at any time, and upon such disapproval, shall be deemed null and void.

§ 993.84 Personal liability.

No member or alternate member of the committee, or any employee, representative, or agent thereof shall be held personally responsible, either individually of jointly with others, in any way whatsoever, to any person, for errors in judgment, mistakes, or other acts, either of commission or omission, as such member, alternate member, employee, representative, or agent, except for acts of dishonesty.

§ 993.85 Separability.

If any provision of this subpart is declared invalid or the applicability thereof to any person, circumstance, or thing is held invalid, the validity of the remainder of this subpart or the applicability thereof to any other person, circumstance, or thing shall not be affected thereby.

§ 993.86 Derogation.

Nothing contained in this subpart is, or shall be construed to be, in derogation or in modification of the rights of the Secretary or of the United States to exercise any powers granted by the act or otherwise, or, in accordance with such powers, to act in the premises whenever such action is deemed advisable.

§ 993.87 Duration of immunities.

The benefits, privileges, and immunities conferred upon any person by virtue of this subpart shall cease upon the termination of this subpart, except with respect to acts done under and during the existence of this subpart.

§ 993.88 Agents.

(a) *Authorization by Secretary.* The Secretary may, by a designation in writing, name any person, including any officer or employee of the United States Government, or name any bureau or division in the United States Department of Agriculture, to act as his agent or representative in connection with any of the provisions of this subpart.

(b) *Authorization by committee.* The committee may authorize any person or persons or agency to act as its agent or representative in connection with the provisions of this subpart.

§ 993.89 Effective time.

The provisions of this subpart, as well as any amendments to this subpart, shall become effective at such time as the Secretary may declare, and shall continue in force until terminated, or during suspension, in one of the ways specified in § 993.90.

§ 993.90 Termination or suspension.

(a) *Failure to effectuate policy of act.* The Secretary may, at any time, terminate the provisions of this subpart, by giving at least one day's notice by means of a press release or in any other manner which he may determine. The Secretary shall terminate or suspend the operation of any or all

of the provisions of this subpart, whenever he finds that such provisions do not tend to effectuate the declared policy of the act.

(b) *Referendum.* The Secretary shall terminate the provisions of this subpart on or before the fifteenth day of July of any crop year, to be effective at the end of such crop year, whenever he is required to do so by the provisions of section 8c(16)(B) of the act. The Secretary may, at any time he deems it desirable, hold a referendum of producers to determine whether they favor termination of this subpart. However, beginning with 1951, if the Secretary receives a recommendation, adopted by at least a majority vote of the producer members of the committee, requesting the holding of such a referendum, the Secretary shall hold such a referendum: *Provided,* That the Secretary shall not be required to hold such a referendum upon the basis of such a request more than once every two years.

(c) *Termination of act.* The provisions of this subpart shall terminate, in any event, upon the termination of the act.

§ 993.91 Procedure upon termination.

Upon the termination of this subpart, the members of the committee then functioning shall continue as joint trustees, for the purpose of liquidating the affairs of the committee. Action by such trustee shall require the concurrence of a majority of the said trustees. Such trustees shall continue in such capacity until discharged by the Secretary, and shall, from time to time, account for all receipts and disbursements and deliver all property on hand, together with all books and records of the committee and the joint trustees, to such person as the Secretary may direct; and shall, upon the request of the Secretary, execute such assignments or other instruments necessary or appropriate to vest in such person full title and right to all the funds, properties, and claims vested in the committee or the joint trustees, pursuant to this subpart. Any person to whom funds, property, or claims have been transferred or delivered by the committee or the joint trustees, pursuant to this section, shall be subject to the same obligations imposed upon the members of the said committee and upon said joint trustees.

§ 993.92 Effect of termination or amendment.

Unless otherwise expressly provided by the Secretary, the termination of this subpart or of any regulation issued pursuant to this subpart, or the issuance of any amendment to either thereof, shall not (a) affect or waive any right, duty, obligation, or liability which shall have arisen or which may thereafter arise in connection with any provision of this subpart or any regulation issued under this subpart, or (b) release or extinguish any violation of this subpart or any regulation issued under this subpart, or (c) affect or impair any rights or remedies of the Secretary, or of any other person, with respect to such violation.

§ 993.93 Amendments.

Amendments to this subpart may be proposed from time to time, by any person or by the committee, and may be made a part of this subpart by the procedures provided under the act.

§ 993.97 Exhibit A; minimum standards.

I. Minimum standards for natural condition prunes:

A. *Defects.* Defects are: (1) Off-color; (2) inferior meat condition; (3) end cracks; (4) fermentation; (5) skin or flesh damage; (6) scab; (7) burned; (8) mold; (9) imbedded dirt; (10) insect infestation; (11) decay.

B. *Explanation of terms.* (1) "Off-color" means a dull color or skin differing noticeably in appearance from that which is characteristic of mature, properly handled fruit of a given variety or type.

(2) "Inferior meat condition" means flesh which is fibrous, woody or otherwise inferior due to immaturity to the extent that the characteristic texture of the meat is substantially affected.

(3) "End cracks" means callous growth cracks, at the blossom end of prunes, aggregating more than three-eighths of one inch (⅜") but not more than one-half of one inch (½") in length.

(4) "Fermentation" means damage to the flesh by fermentation to the extent that the characteristic appearance or flavor is substantially affected.

(5) "Skin or flesh damage" means growth cracks, splits, breaks in skin or flesh of the following descriptions:

(a) Callous growth cracks, except end cracks as defined in this section, aggregating more than three-eighths of one inch (⅜") in length;

(b) Splits or skin breaks exposing flesh and affecting materially the normal appearance of the prunes;

(c) Any cracks, splits or breaks open to the pit;

(d) Healed or unhealed surface or flesh blemishes caused by insect injury and which materially affect appearance, edibility or keeping quality;

(e) Skin damage caused by rain or overdipping to the extent that the prunes cannot be processed normally without material sloughing of the skin.

(6) "Scab" means tough or thick scab exceeding in the aggregate the area of a circle three-eighths of one inch (⅜") in diameter or by unsightly scab of another character exceeding in the aggregate the area of a circle three-fourths of one inch (¾") in diameter.

(7) "Burned" means injury by sunburn or excessive heat in dehydration to the extent that the characteristic appearance, flavor or edibility of the fruit is noticeably affected.

(8) "Mold" means a characteristic fungus growth and is self-explanatory.

(9) "Imbedded dirt" means the presence of dirt or other extraneous material so imbedded in, or adhering to, the prune that it cannot be removed in normal processing.

(10) "Insect infestation" means the presence of insects, insect fragments or insect remains.

C. *Maximum tolerances.* Tolerance allowances shall be on a weight basis and shall not exceed the following:

(1) The tolerance allowance for decay shall not exceed one percent (1%).

(2) The combined tolerance allowance for mold, imbedded dirt, insect infestation, and decay shall not exceed five percent (5%).

(3) The combined tolerance allowance for fermentation, skin or flesh damage, scab-burned, mold, imbedded dirt, insect infestation, and decay shall not exceed eight percent (8%).

(4) The combined tolerance allowance for end cracks, fermentation, skin or flesh damage, scab, burned, mold, imbedded dirt, insect infestation, and decay shall not exceed ten percent (10%), except that the first eight percent (8%) of end cracks shall be given one-half value and any additional percentage of end cracks shall be given full value.

(5) The combined tolerance allowance for off-color, inferior meat condition, end cracks, fermentation, skin or flesh damage, scab-burned, mold, imbedded dirt, insect infestation, and decay shall not exceed twenty percent (20%), except that the first eight percent (8%) of end cracks shall be given one-half value and any additional percentage of end cracks shall be given full value.

(6) Prunes showing obvious live insect infestation shall be fumigated prior to acceptance.

D. Natural condition prunes must be properly dried and cured in original natural condition, without the addition of water, and free from active infestation, so that they are capable of being received, stored and packed without deterioration or spoilage.

II. Minimum standards for processed prunes:

A. *Defects.* Defects are: (1) Off-color; (2) inferior meat condition; (3) end cracks; (4) fermentation; (5) skin or flesh damage; (6) scab; (7) burned; (8) mold; (9) imbedded dirt; (10) insect infestation; (11) decay.

B. *Explanation of terms.* (1) "Off-color" means a dull color or skin differing noticeably in appearance from that which is characteristic of mature, properly handled fruit of a given variety or type.

(2) "Inferior meat condition" means flesh which is fibrous, woody or otherwise inferior due to immaturity to the extent that the characteristic texture of the meat is substantially affected.

(3) "End cracks" means callous growth, cracks, at the blossom end of prunes, aggregating more than three-eighths of one inch (⅜") but not more than one-half of one inch (½") in length.

(4) "Fermentation" means damage to the flesh by fermentation to the extent that the characteristic appearance or flavor is substantially affected.

(5) "Skin or flesh damage" means growth cracks, splits, breaks in skin or flesh of the following descriptions:

(a) Callous growth cracks, except end cracks as defined in this section, aggregating more than three-eighths of one inch (⅜") in length;

(b) Splits or skin breaks exposing flesh and materially affecting the normal appearance of French prunes; or markedly affecting the normal appearance of varieties other than the French variety;

(c) Any cracks, splits or breaks open to the pit;

(d) Healed or unhealed surface or flesh blemishes caused by insect injury and which materially affect appearance, edibility or keeping quality.

(6) "Scab" means tough or thick scab exceeding in the aggregate the area of a circle three-eighths of one inch (⅜") in diameter or by unsightly scab of another character exceeding in the aggregate the area of a circle three-fourths of one inch (¾") in diameter.

(7) "Burned" means injury by sunburn or excessive heat in dehydration to the extent that the characteristic appearance, flavor or edibility of the fruit is noticeably affected.

(8) "Mold" means a characteristic fungus growth and is self-explanatory.

(9) "Imbedded dirt" means the presence of dirt or other extraneous material so imbedded in, or adhering to, the prune that it cannot be readily removed in washing the fruit.

(10) "Insect infestation" means the presence of insects, insect fragments or insect remains.

C. *Maximum tolerances.* Tolerance allowances shall be on a weight basis and shall not exceed the following:

(1) There shall be no tolerance allowance for live insect infestation.

(2) The tolerance allowance for decay shall not exceed one percent (1%).

(3) The combined tolerance allowance for mold, imbedded dirt, insect infestation, and decay shall not exceed five percent (5%).

(4) The combined tolerance allowance for fermentation, skin or flesh damage, scab, burned, mold, imbedded dirt, insect infestation, and decay shall not exceed eight percent (8)%.

(5) The combined tolerance allowance for end cracks, fermentation, skin or flesh damage, scab, burned, mold, imbedded dirt, insect infestation, and decay shall not exceed ten percent (10%), except that the first eight percent (8%) of end cracks shall be given one-half value and any additional percentage of end cracks shall be given full value.

(6) The combined tolerance allowance for off-color, inferior meat condition, end cracks, fermentation, skin or flesh damage, scab, burned, mold, imbedded dirt, insect infestation, and decay shall not exceed twenty percent (20%), except that the first eight percent (8%) of end cracks shall be given one-half value and any additional percentage of end cracks shall be given full value.

Subpart—Administrative Rules and Regulations

Definitions

Source: 26 FR 8278, Sept. 2, 1961, unless otherwise noted.

§ 993.101 Order.

"Order" means Marketing Agreement No. 110, as amended, and Order No. 993, as amended (§§ 993.1-993.97), regulating the handling of dried prunes produced in California, or as they may be further amended hereafter.

§ 993.102 Committee.

"Committee" means the Prune Marketing Committee established pursuant to § 993.24.

[26 FR 8278, Sept. 2, 1961, as amended at 48 FR 57261, Dec. 29, 1983]

§ 993.103 Terms in the order.

Terms defined in the order shall have the same meaning when used in this subpart.

§ 993.104 Lot.

(a) "Lot" for the purposes of § 993.49 and § 993.149 means any quantity of prunes delivered by one producer or one dehydrator to a handler on which inspection is requested: *Provided,* That a lot shall be limited to (1) the prunes contained in not more than 30 "ton box" containers or (2), if in other containers, not more than 60,000 pounds of prunes. If the prunes in any containers are markedly inferior in quality and condition to other prunes in the proffered lot, the containers shall be segregated into lots of reasonable uniform quality.

(b) "Lot" for the purposes of § 993.50 and § 993.150 means:

(1) With respect to in-line inspection either (i) the aggregate quantity of prunes of the same size, other than those rejected by inspection, processed in any continuous production of one calendar day and packed during such day in one size and style of container or (ii) the aggregate quantity of prunes of the same size, other than those rejected by inspection, so processed and held in packing containers for later packaging.

(2) With respect to floor inspection either (i) prunes not previously inspected in-line, of the same size, in like containers, bearing the same identification (e.g., brand) if in consumer packages, and offered for inspection as a lot; or (ii) prunes previously inspected in-line but rejected as failing to meet requirements, of the same size, in like containers, processed in any continuous production of one calendar day, and offered for inspection as a new lot.

§ 993.105 Size count.

"Size count" means the count or number of prunes per pound.

[26 FR 8278, Sept. 2, 1961. Redesignated at 35 FR 11380, July 16, 1970 and 37 FR 15980, Aug. 9, 1972]

§ 993.106 In-line inspection.

"In-line inspection" means inspection of prunes where samples are drawn from a flow of prunes prior to packaging.

§ 993.107 Floor inspection.

"Floor inspection" means inspection of prunes where samples are drawn from packaged prunes or from unpackaged prunes that are held in packing containers.

§ 993.108 Non-human consumption outlet.

"Non-human consumption outlet" means any livestock feeder or manufacturer of inedible syrup, industrial alcohol, animal feed, or other product for non-human use, who has established, to the satisfaction of the committee, that any prunes or prune waste received for a non-human use will be used only within such outlet.

[26 FR 8278, Sept. 2, 1961; 26 FR 8483, Sept. 9, 1961]

§ 993.109 Modified definition of non-French prunes.

The definition of non-French prunes set forth in § 993.6 is modified to read as follows: "Non-French Prunes" means prunes commonly known as Imperial, Sugar, Robe de Sargent, Burton, Standard, Jefferson, Fellenberg, Italian, President, Giant, Hungarian (Gross), and Moyer, produced from such varieties of plums.

[38 FR 22887, Aug. 27, 1973]

PRUNE ADMINISTRATIVE COMMITTEE

§ 993.128 Nominations for membership.

(a) *Districts.* In accordance with the provisions of § 993.28, the districts referred to therein are described as follows:

District No. 1. That portion of Sutter County south of a line extending along Nuestro Road, easterly to the Yuba County line, and westerly to the Colusa County line.

District No. 2. That portion of Sutter County not included in District 1.

District No. 3. The Counties of Sonoma, Napa, Yolo, Lake, Mendocino, Humboldt, Trinity, Del Norte, and Siskiyou.

District No. 4. The Counties of Santa Clara, San Benito, Contra Costa, Solano, Kern, Tulare, Fresno, Merced, Stanislaus, San Joaquin, Sacramento, Placer, and all other Counties not specified in Districts No. 1, 2, 3, 5, 6, and 7.

District No. 5. Butte County.

District No. 6. Yuba County.

District No. 7. The Counties of Shasta, Tehama, Glenn, and Colusa.

(b) *Voting procedures*—(1) *Independent producers.* Prior to March 8 of each election year, the Committee shall cause a meeting to be held, in each of the election districts established pursuant to § 993.28(a) for the purpose of obtaining names of proposed candidates for nomination to the Secretary for selection as members and alternate members for the respective districts. Each such candidate must be a producer in the district for which he is proposed. Prior to March 15 of that election year, the Committee shall prepare for each district and mail to each independent producer of record in such district a ballot as prescribed in § 993.28(a). Each voter shall be entitled to cast only one vote for a member nominee and only one vote for an alternate member nominee in a district in which he is a producer, and no voter shall vote for candidates in more than one district. In case he is a producer in more than one district he shall elect in which of such districts he will vote and notify the Committee as to his choice. In order to be counted, such a mail ballot must be executed and returned to the Committee postmarked not later than the following March 31. One nominee for member and one nominee for alternate member for each district shall be submitted to the Secretary by the Committee on the basis of those receiving the plurality of the mail ballots cast for the respective positions in the particular district. Returns shall be considered in light of the voting by each district separately.

(2) *Independent handler nominees.* (i) Prior to March 15 of each election year, the Committee shall notify each independent handler of record of the group of independent handlers in which he has been classified pursuant to the provisions of § 993.28(c) and of the number of independent handler positions on the Committee for the ensuing term of office pursuant to the provisions of § 993.24 (b) and (c). Prior to April 1 of each election year, each of the two independent handlers classified in the group specified in § 993.28(c)(1) shall notify the Committee in writing of his nominee for member and nominee for alternate member as prescribed therein.

(ii) In any election year in which four member positions and four alternate member positions are assigned to independent handlers for the ensuing term of office, the Committee shall, prior to April 1 of such year, cause to be held a meeting of the three independent handlers classified in the group specified in § 993.28(c)(2) and a separate meeting of all other independent handlers classified in the group specified in § 993.28(c)(3). Each group at its meeting shall, from among that group, elect one member nominee and one alternate member nominee by plurality vote. Each handler present at the meeting of his group shall be entitled to one vote for a candidate for each position assigned to that group.

(iii) In any election year in which only three member positions and three alternate member positions are assigned to independent handlers for the ensuing term of office, the Committee shall, prior to April 1 thereof, cause to be held a meeting of all independent handlers except those classified in the group specified in § 993.28(c)(1). At such meeting one member nominee and one alternate member nominee shall be elected in accordance with the applicable provisions of § 993.28(c).

[47 FR 7389, Feb. 19, 1982]

Grade and Size Regulations

§ 993.149 Receiving of prunes by handlers.

(a) *Receiving stations*—(1) *General.* Prunes shall be received by a handler at any receiving station so designated by the Committee. "Receiving station" shall mean any plant of a handler or a dehydrator's premises; this term shall also mean any other place where prunes are normally and usually received by a handler in any considerable volume as ranch deliveries, and at which there are adequate facilities to enable the inspection service to determine whether the prunes meet the applicable grade, size, and condition requirements.

(2) *Receiving at dehydrator.* Any handler may arrange with the committee and the inspection service for the incoming inspection and certification to be based on samples of prunes drawn as prune plums and dehydrated in the same manner as the prunes to which they are referable. Where such arrangement is acceptable to the Committee as permitting the inspection and certification of the prunes to be comparable to an inspection and certification when based on samples drawn as prunes, such certification shall be acceptable for the purposes of this section if the inspector further certifies that the dehydration process of the prunes being certified resulted in prunes eligible to be received under the terms and conditions of this part.

(b) *Inspection stations.* Prunes shall be inspected only at inspection stations established by the inspection service with the concurrence of the Committee. "Inspection station" shall mean a centralized station and any receiving station other than a handler's plant or a dehydrator's premises.

(c) *Incoming inspection*—(1) *General.* Upon any producer or dehydrator delivering prunes to a handler, the handler shall issue to the inspection service an identification tag showing the name and address of such producer or dehydrator, the date of delivery, the county of production, the number and type of containers, the approximate net weight of the prunes, the place where the prunes are to be inspected, and any other information necessary to identify such prunes to the satisfaction of the inspector and the Committee. For each such delivery, the handler shall issue to the producer or dehydrator a door receipt or weight certificate showing the name and address of the producer or dehydrator, the weight of the delivery, and

any other information necessary to identify the delivery. Such information shall be available to the inspector and the Committee. Each lot shall be sampled separately and as soon as practicable following delivery. The handler shall supply any necessary information together with any assistance needed by the inspector in drawing samples including the dumping of containers.

(2) *Certification.* Following inspection of a lot not returned to the producer or dehydrator, the handler shall require the inspection service to issue, in quintuplicate, a certificate containing at least the following information: (i) The place where samples were drawn and the date and place of inspection; (ii) the name and address of the producer or dehydrator, the handler, and the inspection service; (iii) the variety of the prunes, the county in which such prunes were produced, the number and type of the containers thereof, the net weight of the prunes as shown on the applicable door receipt or weight certificate, together with the number of such receipt or certificate, and the contract or account number under which the prunes were delivered; (iv) whenever applicable, the percentage by weight of undersized prunes in the lot; (v) with respect to the balance of the lot, the inspector's computation of the percentage, by screen size of prunes and in the aggregate, of each group or combination of groups of defects for which a maximum tolerance is in effect; (vi) whether the prunes in the lot, exclusive of any undersigned prunes, are standard or substandard; (vii) the inspector's computation of the percentage of weight of each screen size and in the aggregate, of offgrade prunes (those defective pursuant to § 993.97) necessary to be removed therefrom in order for the remainder in each screen size and in the aggregate to be standard prunes, and (viii) the average size count of prunes of each screen size and of the aggregate: *Provided,* That whenever an undersized prune regulation is in effect for the crop year, the average size count shall be of all prunes except undersized prunes in the lot, by screen size and in the aggregate. The handlers shall require the inspection service to furnish promptly the producer or dehydrator with one copy of the certificate and the handler with two copies.

(d) *Conditional provisions*—(1) *Wet or slack-dry prunes.* Any prunes delivered to a handler by a producer or dehydrator which an inspector determines have not been properly dried and cured in original natural condition, or which show evidence of the addition thereto of water, may be held by the handler for the account of the producer or dehydrator for conditioning by further drying or dehydration: *Provided,* That such prunes shall be identified and kept separate and apart from any other prunes in the handler's possession until resubmitted for inspection and certificated as properly dried and cured, or returned to the producer or dehydrator. The certificate shall show, in addition to other inspection requirements, that the conditioning was performed and indicate the net weight after conditioning.

(2) *Prunes with active insect infestation.* Any prunes delivered to a handler which an inspector determines are not free from active insect infestation, may be returned to the producer or dehydrator or may be held by the handler for the account of the producer or dehydrator for conditioning by fumigation: *Provided,* That such prunes shall be identified and kept separate and apart from any other prunes in the handler's possession until resubmitted for inspection and certificated to show, in addition to other inspection requirements, performance of fumigation and freedom from active infestation.

(3) *High moisture content prunes.* The delivery of any high moisture content prunes to a handler by a producer or dehydrator shall be reported promptly by the handler to the inspection service. The inspection service shall be requested to submit a report to the committee of each such delivery which shall contain the following information: (i) The date and place of the delivery; (ii) the name and address of the producer or dehydrator, the handler, and the inspection service; and (iii) the variety of the high moisture content prunes, the county in which they were produced, and their

net weight as shown on the door receipt or weight certificate, together with the number of such receipt or certificate. Any handler who, subsequent to delivery to him of high moisture content prunes, elects to dry or dehydrate them or any portion thereof to a point where they are capable of being received by such handler shall, prior to proceeding with such drying or dehydration, notify an inspector of the inspection service of his election, and the same procedure shall apply as set forth in paragraph (d)(1) of this section. For each day on which a handler processes and packages high moisture content prunes, he shall furnish promptly to the inspector a signed statement and one copy showing the handler's name and address and the net weight of the total tonnage of high moisture content prunes processed and packaged by him on that day. The handler shall furnish promptly to the inspector two copies of the shipping or disposition order or other documents which shall show the date of each shipment or disposition, the applicable reference number thereof, and an adequate description of the shipment or disposition. One copy of each document so furnished shall be required to be forwarded to the committee. Upon request of the committee a handler shall, within ten days thereafter, file with the committee a signed report on Form PMC 3.1 "Report of High Moisture Content Prunes" which shall contain the following information: (i) The date and the name and address of the handler; (ii) the total tonnage of high moisture content prunes delivered to the handler during the crop year to the date of the report; (iii) the total tonnage of high moisture content prunes shipped or otherwise disposed of by the handler during such period; (iv) the total tonnage of high moisture content prunes delivered to the handler during such period which were dried or dehydrated and received as prunes by the handler; and (v) the total tonnage of high moisture content prunes in the handler's possession on the date of the report.

(4) *Return of prunes to producers and dehydrators.* Any lot of prunes delivered to a handler by a producer or dehydrator may be returned to the producer or dehydrator prior to an inspection thereof. Any lot of prunes so delivered whose identity has been maintained may be so returned following an inspection thereof, except prunes which have been size graded or sorted by the handler, resulting in a segregation of defects. Prunes which have been sorted for the producer or dehydrator, the identity of which have been maintained to the satisfaction of the inspector and the Committee, may be resubmitted for inspection in not more than three new lots, equal in weight to the original lot, and the applicable inspections shall supersede the original inspection.

[26 FR 8278, Sept. 2, 1961, as amended at 33 FR 11812, Aug. 21, 1968; 33 FR 12033, Aug. 24, 1968; 33 FR 14172, Sept. 19, 1968; 35 FR 11380, July 16, 1970; 37 FR 15980, Aug. 9, 1972; 39 FR 30343, Aug. 22, 1974; 43 FR 40199, Sept. 11, 1978; 48 FR 57261, Dec. 29, 1983]

§ 993.150 Disposition of prunes by handlers.

(a) *Inspection stations.* An inspection station shall be any plant of a handler, and any other place where he handles prunes.

(b) *Outgoing inspection.* Except as otherwise specifically provided, no handler shall ship or otherwise make final disposition of natural condition prunes or of processed prunes unless he has, prior to such shipment or final disposition, had them inspected and obtained a certificate showing that such prunes meet the effective minimum standards. Such inspection shall be made during that portion of the final preparation of the prunes for shipment or other final disposition as will permit proper sampling, whether in-line or floor inspection, and no handler shall perform such final preparation unless an inspector is present. The handler shall furnish promptly to the inspector a copy of the shipping or disposition order or other documents, which shall show the date of each shipment or disposition, the applicable reference number thereof, and an adequate description of the shipment or disposition. For the prunes inspected each day which meet the applicable minimum grade and size requirements

for standard prunes, or standard processed prunes, the handler shall cause the inspector to issue in triplicate a signed certificate containing the following information: (1) The date and place of inspection; (2) the name and address of the handler and of the inspection service; (3) the number and size of packages or the net weight of prunes; (4) the number of the worksheet or worksheets on which the inspector's computations and results of tests are recorded; and (5) a statement that the prunes meet the effective minimum standards for standard prunes, or standard processed prunes, as the case may be.

(c) *Interhandler transfers.* With the exception of those prunes held by a handler pending their disposition pursuant to § 993.49(c) and those prunes held by him for the account of the Committee pursuant to § 993.57, a handler may transfer prunes to another handler within the area. Any such interhandler transfer may be without the transferring handler having an inspection made as provided for in § 993.51: *Provided,* That before each such transfer the transferring handler shall: (1) Give written notice of the transfer to the inspection service including the proposed date of the transfer, the names of the handlers and, by plant designation, the present location and the destination of the prunes, the number of containers, variety, size designation, and total net weight of the prunes, and the manifest or billing number; and (2) receive from the inspection service a DFA Form P-5 "Shipping Inspection Report and Certificate" marked "Interhandler Transfer Report" on which the inspection service recorded the information furnished by the transferring handler. The transferring handler shall sign the "Interhandler Transfer Report" including all copies thereof that were received from the inspection service, and forward the signed original and one copy to the receiving handler at the time of the interhandler transfer. Upon receipt of the transferred prunes, the receiving handler shall enter on both the original and the copy the date he received the prunes, sign the original, and immediately forward it to the inspection service. The transferring handler shall cause the inspection service to promptly report the transfer to the Committee. As provided in § 993.50(f), the receiving handler shall, before shipping or otherwise making final disposition of such prunes, comply with the requirements of §§ 993.50 and 993.51.

(d) *Tolerances for non-French prunes.* Any lot of standard prunes or standard processed prunes containing more than 2 percent by weight of non-French prunes shall be disposed of only in prune product outlets as prescribed in § 993.50(c) unless the non-French prunes therein have an average count of 40 or less per pound and unless in a 100-ounce sample of the lot, the count per pound of 10 ounces of the smallest prunes in the sample does not vary from the count per pound of 10 ounces of the largest prunes in the sample by more than 35 points. A lot shall be deemed to exceed the 2 percent tolerance for non-French prunes whenever an inspection shows such prunes exceed 2 percent in any four consecutive sampling units of two tons or less or, if less than four such units are sampled, in such lesser number of units.

(e) *Prunes which fail to meet minimum standards*—(1) *Committee's approval of disposition*—(i) *General.* Those defective prunes accumulated by a handler by removing them from standard or substandard prunes, and those prunes received or held by a handler which fail to meet the applicable minimum standards and are held for disposition without removal of defective prunes in excess of maximum tolerances, may only be used, if within the tolerances prescribed in § 993.97 II. C. (1), (2), and (3), for prune products, or if any such tolerances are exceeded and any live infestation corrected by fumigation, for non-human consumption or be destroyed. In order to insure that all such prunes are shipped or otherwise disposed of in accordance with § 993.50(e), no handler shall during any crop year ship or otherwise make final disposition of any such prunes, other than prune waste subject to daily non-human disposition for sanitation purposes, unless prior thereto he had obtained during that crop year (except as otherwise provid-

ed in paragraph (e)(1)(iii) of this section) the Committee's approval of his application to do so.

(ii) *Application for approval.* The handler's application to ship or otherwise make final disposition of any such prunes shall be submitted on Form PMC 2.2 "Application for Permission to Dispose of Substandard Prunes". If the prunes are for shipment, the application shall set forth: (*a*) The name and address of the handler's vendee and the name and address of the consignee whether the same as or different from the vendee; (*b*) the particular use to be made of the prunes; (*c*) if such use is to be by a person other than the handler's vendee or the consignee, the name and address of such user; and (*d*) the crop year or the period within, or the portion of, the crop year during which shipments are to be made. When the use or the name and address of the consignee or user are not known by the handler, the handler shall arrange for the submission of such information to the Committee. If use is to be by the handler, the application shall so indicate and shall set forth all applicable information. Each application for shipment shall be limited to the handler's vendee and the consignee if different from the vendee, and to a specific user and use, and may be open as to quantity: *Provided,* That, when the use or name and address of the user are not known by the handler, the application shall include the quantity of prunes to be shipped and be limited to that quantity. Each application for final disposition for a particular use by the handler shall be limited to such handler and use.

(iii) *Approval of applications.* The Committee's approval of a handler's application shall be transmitted to the handler on Form PMC 2.3 "Permission to Dispose of Substandard Prunes". In approving an application, the Committee shall specify the crop year, or the period within or the portion of the crop year, for which the approval is granted: *Provided,* That, the Committee may approve in July any such application that is submitted during that month by the handler for shipment or other final disposition of the prunes covered thereby in the succeeding crop year. When the use or the name and address of the user or consignee are not known to the handler, the Committee shall not approve the application until it has been informed as to such use and user and consignee of the prunes.

(iv) *Disapproval of applications; or revocation of approved applications.* In acting on an application, the Committee may disapprove the application when: (*a*) The application does not conform with the requirements of paragraph (e)(1)(ii) of this section; (*b*) the Committee has cause to believe that the prunes covered by the application will not be shipped or disposed of in accordance with the application; or (*c*) the handler, or any of the parties involved in the proposed shipment or disposition, had shipped or made other disposition of prunes covered by a previously approved application inconsistent with that application. The Committee may for cause revoke a handler's previously approved application if he ships or makes other disposition inconsistent with such application. Whenever a user uses prunes inconsistent with an approved application, the Committee may for cause revoke such application, and such other approved applications applicable to such user as the Committee deems necessary to assure that the prunes covered by such applications will not be used in a manner inconsistent with those applications or the order. The Committee shall notify the handler in writing of each disapproval and each revocation.

(v) *Evidence of non-human disposition.* Whenever defective or substandard prunes or prune waste are shipped to or otherwise disposed of in non-human consumption outlets, or destroyed, the handler shall furnish the Committee with a copy of the shipping document or other documentary evidence of the disposition as may be satisfactory to the Committee and at such times as the Committee may direct.

(vi) *Books and records.* Each handler who ships or otherwise disposes of defective or substandard prunes or prune waste shall make available for examination by the Committee, at his business office at any reasonable time

during business hours, copies of all applicable purchase orders, sales contracts, or disposition documents, together with any further information which the Committee may deem necessary or desirable to enable it to determine whether such prunes or prune waste have been or will likely be utilized as authorized.

(2) *Out of the area shipments.* Whenever substandard prunes for human consumption are packed in closed containers, and if for shipment outside the area they shall be so packed, each such container shall be clearly marked "For Manufacturing Purposes Only". Whenever substandard prunes restricted to non-human usage are shipped in closed containers, each such container shall be clearly marked "For Non-Human Usage". In each instance, the letters shall be of reasonable prominence and in a conspicuous place on the container.

(3) *Inspection of substandard prunes.* Each handler shall cause substandard prunes, for use in prune products, to be inspected (prior to disposition or shipment by a handler) by an inspector, and that such inspector issue, in triplicate, a signed clearance certificate (for the preparation of which the handler shall make available to the inspector the necessary data) containing the following information: (i) The date and place of inspection and clearance; (ii) the name and address of the inspection service and of the handler; (iii) the number and kind of packages, the net weight, and the adequacy of the marking; (iv) the lot number or shipping or disposition order number; (v) the committee's approval number; (vi) the destination; and (vii) the actual percentage of off-grade prunes of each group, or combination of groups, of defects in excess of the then current tolerances for standard prunes or standard processed prunes.

(f) *Pitted prunes*—(1) *For human consumption as such.* No handler shall ship or otherwise make final disposition of any lot of pitted prunes for human consumption as pitted prunes unless the lot, before pitting, met (i) the applicable minimum standards set forth in § 993.97 (Exhibit A), or as such standards may be modified, for standard prunes or standard processed prunes, and (ii) the requirements specified in § 993.50 (c) and (d).

(2) *For use in prune products.* Any lot of substandard prunes, whether natural condition or processed, if within the applicable tolerances prescribed in § 993.97 II C (1), (2), and (3), may be pitted and shipped or disposed of for use and used in prune products for human consumption: *Provided,* That prior to shipment or other final disposition by handler, such prunes have lost their form and character as prunes to the satisfaction of the inspector and the committee. An inspection certificate on such lot shall not be issued until the inspector has determined that the prunes therein have lost their form and character as prunes. Disposition of pitted prunes by handlers for use in prune products shall be in accordance with the applicable provisions of paragraph (e) of this section.

(g) *Disposition of undersized prunes*—(1) *Application for and approval of disposition.* Undersized prunes accumulated by a handler pursuant to § 993.49(c) shall be disposed of in nonhuman consumption outlets during the crop year in which the prunes establishing such obligation were received from producers and dehydrators. Prior to making any such disposition, the handler shall obtain the Committee's approval of his application to do so. The handler's application to ship or otherwise make final disposition of any such undersized prunes shall be submitted on Form PMC 2.21 "Application for Permission to Dispose of Undersized Prunes" which shall set forth: (i) The name and address of the handler's vendee and the name and address of the consignee whether the same as or different from the vendee; (ii) the particular use to be made of the prunes; (iii) if such use is to be by a person other than the handler's vendee or the consignee, the name and address of such user; and (iv) the crop year or the period within, or portion of, the crop year during which shipment or other disposition is to be made. When the use or the name and address of the consignee or user are not known by the handler, the handler shall arrange

for the submission of such information to the Committee. If use is to be by the handler, the application shall so indicate and shall set forth all applicable information. Each application for shipment shall be limited to the handler's vendee and the consignee, if different from the vendee, and to a specific user and use. Each application for final disposition for a particular use by the handler shall be limited to such handler and use. The Committee's approval of a handler's application shall be transmitted to the handler on Form PMC 2.31 "Permission to Dispose of Undersized Prunes." In approving an application, the Committee shall specify the crop year or the period within, or the portion of, the crop year for which the approval is granted. When the use or name and address of the user or consignee are not known to the handler, the Committee shall not approve the application until it has been informed as to such use and user and consignee of the prunes. The requirements of § 993.150(e)(1) (iv) (except item (*a*) thereof), (v), and (vi) with regard to disapproval of applications or revocation of approved applications, evidence of nonhuman disposition, and the maintenance of books and records, applicable to prunes which fail to meet minimum standards, shall also apply to undersized prunes.

(2) *Documentation of disposition of undersized prunes*—(i) *Inspection and certification.* The handler shall cause an inspection to be made of each lot of undersized prunes prior to shipment or other disposition to determine whether such prunes meet the applicable requirements prescribed with respect to undersized prunes. After such determination, the handler shall cause a signed inspection certificate applicable to such prunes to be forwarded promptly to the Committee.

(ii) *Documentation of shipment or other disposition.* For each quantity of undersized prunes so shipped or otherwise disposed of, the handler shall promptly forward to the Committee one copy of the applicable bill of lading, truck receipt, or related documentation of disposition which shall show: (*a*) The name of the consignee; (*b*) the Committee approval number; (*c*) the destination by name and address of the person designated to receive the prunes; (*d*) the date of shipment or other disposition; (*e*) the inspection certificate number; (*f*) the net weight of the prunes; (*g*) the weight certificate number; and (*h*) identification of the prunes as undersized prunes.

(iii) *Certification or receipt.* The handler shall forward with each quantity of undersized prunes disposed of a certification form in triplicate, Form PMC 4.71 "User's Receipt of Dried Prunes for Nonhuman Usage" on which the handler shall have entered the following applicable information: (*a*) The inspection certificate number; (*b*) the Committee approval number; (*c*) the shipping or other disposition document number; (*d*) the name of the carrier; (*e*) the date of shipment or other disposition; and (*f*) the license or car number of each carrier unit, if applicable, used in the movement of the prunes to the destination of disposition or usage. The handler shall cause, either directly or through the vendee or consignee, the user of the prunes to certify on Form PMC 4.71 the receipt by him of the applicable prunes and to promptly forward the original thereof to the Committee. Such certification shall set forth the location where the prunes were received, the date of such receipt, the name and address of the person who will use or otherwise dispose of the prunes, and the signature and authority of the certificate to act for the user.

(iv) *Certification of usage.* The handler shall cause, either directly or though the vendee or consignee, the user of the prunes to certify, and forward to the Committee, one copy of Form PMC 4.71, following use or disposition thereof, that the prunes have been used or otherwise disposed of, the date and location at which use or other disposition took place, the name and address of the user, the signature and authority of the certificant to act for the user, and the date of his certification.

(3) *Tolerances permitting a deviation in prune sizes from applicable undersized openings*—(i) *Undersized French prunes.* Whenever an undersized regulation specifies an opening

of $^{23}/_{32}$ of an inch for French prunes, any quantity of French prunes disposed of by a handler in compliance with § 993.50(g) shall not contain more than 15 percent by weight of prunes which do not pass freely through a round opening $^{24}/_{32}$ of an inch in diameter. Whenever an undersized regulation specifies an opening of $^{24}/_{32}$ of an inch in diameter for French prunes, any quantity of French prunes disposed of by a handler in compliance with § 993.50(g) shall not contain more than 12 percent by weight of prunes which do not pass freely through a round opening $^{26}/_{32}$ of an inch in diameter.

(ii) *Undersized non-French prunes.* Whenever an undersized regulation specifies an opening of $^{26}/_{32}$ of an inch for non-French prunes, any quantity of non-French prunes disposed of by a handler in compliance with § 993.50(g) shall not contain more than 10 percent by weight of prunes which do not pass freely through a round opening $^{30}/_{32}$ of an inch in diameter. Whenever an undersized regulation specifies an opening of $^{30}/_{32}$ of an inch in diameter for non-French prunes, any quantity of non-French prunes disposed of by a handler in compliance with § 993.50(g) shall not contain more than 12 percent by weight of prunes which do not pass freely through a round opening $^{34}/_{32}$ of an inch in diameter.

[26 FR 8280, Sept. 2, 1961, as amended at 27 FR 458, Jan. 17, 1962; 29 FR 2331, Feb. 11, 1964; 33 FR 14172, Sept. 19, 1968; 35 FR 5108, Mar. 24, 1970; 35 FR 11381, July 16, 1970; 37 FR 15980, Aug. 9, 1972; 40 FR 52838, Nov. 13, 1975; 48 FR 57261, Dec. 29, 1983]

Reserve Control

§ 993.156 Application of reserve percentage.

The reserve obligation of each handler shall be determined by applying the reserve percentage to the weight of prunes in each lot, after deducting the weight of prunes in such lot shown as a percentage on the applicable inspection certificate as necessary to be removed therefrom pursuant to § 993.49(c), in such manner as may be prescribed in such reserve control regulation established for the crop year in which such lot is received by a handler from a producer or dehydrator.

[30 FR 13311, Oct. 20, 1965]

§ 993.157 Holding and delivery of reserve prunes.

(a) *Sales and deliveries.* Committee sales and deliveries of reserve prunes from the holdings of any handler shall not exceed the quantity of reserve prunes required to be held by him. The reserve prune holding requirement of the handler shall be reduced by the tonnage so sold or delivered.

(b) *Assistance to handlers.* As assistance to handlers, the committee shall furnish each handler a monthly tabulation, beginning as soon as possible after the start of the crop year, showing his reserve obligation and holding requirement based on records on file with the committee.

(c) *Failure to hold and deliver reserve prunes in accordance with reserve obligation.* In the event a handler fails to hold for the committee and deliver his total reserve prune obligation in any category and is unable to rectify such a deficiency with salable prunes, he shall compensate the committee in an amount computed by multiplying the pounds of natural condition prunes so deficient by the applicable values established by the committee: *Provided,* That the remedies prescribed herein shall be in addition to, and not exclusive of, any of the remedies or penalties prescribed in the act with respect to noncompliance. The determination of any such deficiency shall include application of any tolerance allowance for shrinkage in weight, increase in the number of prunes per pound, and normal and natural deterioration and spoilage which may then be in effect.

(d) *Excess delivery of prunes to the committee.* In the event a handler delivers to the committee as reserve prunes a quantity of prunes in excess of his holding requirement for reserve prunes, the committee shall make such practical adjustments as are consistent with this part and this may include compensating the handler for such excess (nonreserve prunes) by paying to him the proceeds received by the committee for such excess.

(e) *Holding reserve prunes on other than a handler's premises.* No handler shall hold reserve prunes on the premises of another handler, or in approved commercial storage other than on his own premises, unless prior thereto he notifies the committee in a certified report on Form PMC 5.1 "Notice of Proposed Intent to Store Reserve Prunes" which shall contain at least the following information: (1) The date and the name and address of the handler; (2) the name and address of the person on whose premises the reserve prunes will be stored for the handler; (3) the approximate quantity to be so stored and the exact location and description of the storage facilities; and (4) the proposed date that such storage will begin. The report shall be accompanied by a signed statement by the persons on whose premises the reserve prunes are to be stored agreeing to hold such prunes under conditions of proper storage and further agreeing to permit access to such premises by the committee at any time during business hours for the purpose of examining or taking delivery of such prunes in accordance with the provisions of this part. No handler shall be permitted to hold reserve prunes on any premises outside the area.

(f) *Exchange of salable prunes for reserve prunes.* No handler shall exchange salable prunes for reserve prunes unless he has entered into a sales agreement authorized pursuant to § 993.65(b) whereby the value of any such exchange, and payment therefor to the committee, shall be determined.

(g) *Delivery by nonsignatory handlers.* Any handler not signing the sales agreement authorized pursuant to § 993.65(b), shall deliver to the Committee, upon demand, the total weight of his reserve obligation by such variety, grade, and size categories, and at the count per pound for each size category as is required by the reserve control regulation of the applicable crop year. Such deliveries of prunes may be either graded prunes or any lot of ungraded prunes, or portion thereof, identifiable to the satisfaction of the committee as being in the same form as when received: *Provided,* That the percent of standard prunes in each lot shall be taken into account but with respect to any lot of graded prunes, no credit shall be given to the standard obligation of the handler if in a sample of 100 ounces, the count per pound of 10 ounces of the smallest prunes exceeds the count per pound of 10 ounces of the largest prunes by more than 45 prunes per pound.

[33 FR 19162, Dec. 24, 1968; 48 FR 57261, Dec. 29, 1983]

§ 993.158 Deferment of reserve withholding.

Any handler who desires to defer withholding pursuant to the provisions of § 993.58 shall notify the committee on Form PMC 9.1, "Notification of Desire for Deferment of Reserve Withholding", containing at least the following information: (a) The date and the name and address of the handler; (b) the total salable prunes acquired or under contract with producers and dehydrators; (c) the period for which deferment is requested; and (d) the tonnage of reserve prunes, by categories, on which deferment is requested. The notification shall be accompanied by the undertaking and bond or bonds required by § 993.58. No handler shall defer withholding of reserve prunes until he has filed the required undertaking and bond or bonds with the committee and has received its acceptance.

[30 FR 13311, Oct. 20, 1965; 48 FR 57261, Dec. 29, 1983]

§ 993.159 Schedule of payments and conditions.

(a) *Rate of payment for necessary services.* Each handler shall, with respect to reserve prunes held by him for the account of the committee pursuant to § 993.57, be paid at the rate of $25 per ton (natural condition weight) for necessary services rendered by him in connection with such prunes so held during all or any part of the crop year in which the prunes were received from producers or dehydrators. Such amount shall, together with the additional payments, as applicable, provided in this section, be in full payment for the costs incurred in connection with but not being limited to, the fol-

lowing services: Inspection, receiving, storing, grading, and fumigation. The costs include, but are not limited to:

(1) Acquisition costs, which include those for salaries, commission, or brokerage fees, transportation and handling between plants and receiving stations, inspection, and other costs, including container expense, incidental to acquisition or storage;

(2) Direct labor costs, which include those for receiving, grading, preliminary sorting and storing (including that performed by the handler at the receiving station), and loading for shipment or other delivery to the committee or its designee; and

(3) Plant overhead costs, which include those for superintendence, indirect labor, fuel, power and water, taxes and insurance on facilities, depreciation and rent, repairs and maintenance, factory supplies and expense, and employee benefits (payroll taxes, compensation insurance, and other such costs).

(b) *Reimbursement for required insurance costs.* Each handler holding reserve prunes for the account of the Committee shall maintain proper insurance thereon, including fire and extended coverage, in valuations (according to grade and/or size) established by, or acceptable to, the Committee for the particular crop year. The Committee shall reimburse the handler for the actual costs of such insurance. Prior to the receipt of reserve prunes at the beginning of each crop year, the handler shall certify to the Committee and the Secretary, on Form PMC 4.5, that he has a fire and extended coverage policy fully insuring all reserve prunes received by him during such crop year. Such certification shall contain the following information: (1) The name and address of the handler; (2) the location(s) where reserve prunes will be held for the account of the Committee and the premium rate per $100 value per annum at each location; (3) the value per ton at which the reserve prunes are insured; and (4) the name and address of the insurance underwriter.

(c) *Certain additional payments in connection with the holding of reserve prunes for the account of the Committee.* (1) Whenever a handler is directed by the committee to move and dump containers or reserve prunes held by him for the account of the committee for the purpose of causing an inspection to be made of the prunes, as provided in § 993.75, but without taking delivery of the prunes at that time, the handler shall be paid for such services at the rate of $2.50 per ton (natural condition weight).

(2) Commencing with 1968-69 crop year reserve prunes, each handler holding reserve prunes for the account of the committee beyond the end of the crop year in which such prunes were received from producers or dehydrators shall be paid as follows:

(i) For storage and necessary fumigation:

(*a*) $2 per ton during all or any part of the first 3 months of the succeeding crop year;

(*b*) $1 per ton during all or any part of the second 3 months of the succeeding crop year;

(*c*) 25 cents per ton during all or any part of the third 3 months of the succeeding crop year; and

(*d*) 25 cents per ton during all or any part of the fourth 3 months of the succeeding crop year.

(ii) $3 per ton for bin rental during all or any part of the succeeding crop year.

(iii) For insurance as prescribed in paragraph (b) of this section.

(d) *Certain additional payments in connection with the delivery of reserve prunes to the committee or its designee.* (1) Whenever a handler is directed by the committee to deliver to it or its designee reserve prunes in natural condition, the committee shall furnish the handler with the containers in which to deliver the prunes, or reimburse the handler, at cost, for any containers which he furnishes pursuant to an agreement with the committee.

(2) Whenever the committee arranges with a handler for the reserve prunes delivered to it or its designee to be in processed and packaged condition, the committee shall reimburse the handler at the agreed rate, determined by the committee to be reasonable, for the processing, container, and packaging costs.

[31 FR 5751, Apr. 14, 1966, as amended at 34 FR 19704, Dec. 16, 1969; 35 FR 11381, July 16, 1970; 48 FR 57261, Dec. 29, 1983]

VOLUNTARY DIVERSION

§ 993.162 Voluntary prune plum diversion.

(a) *Quantity to be diverted.* The Committee shall indicate the quantity of prune plums that producers may divert pursuant to § 993.62 whenever it recommends to the Secretary that diversion operations for a crop year be permitted. The Committee shall compute the dried weight equivalent of prune plums so diverted on a dryaway basis in accordance with the following schedule:

(1) For prune plums of French variety produced in the counties of Del Norte, Humboldt, Lake, Marin, Mendocino, Napa, Siskiyou, Solano, Sonoma, and Trinity, 1 pound of dried prunes for each 2.6 pounds of prune plums diverted;

(2) For prune plums of French varieties produced in the counties of Alameda, Monterey, San Benito, Santa Clara, Santa Cruz, San Francisco, and San Mateo, 1 pound of dried prunes for each 2.75 pounds of prune plums diverted;

(3) For prune plums of French varieties produced in the counties of Amador, Butte, Colusa, Contra Costa, Glenn, Sacramento, Shasta, Sutter, Tehama, Yolo, and Yuba, 1 pound of dried prunes for each 3 pounds of prune plums diverted;

(4) For prune plums of French varieties produced in the counties of Fresno, Merced, San Joaquin, San Luis Obispo, Stanislaus, Tulare, and all of the counties in the area not included in paragraphs (a) (1), (2), and (3) of this section, 1 pound of dried prunes for each 3.25 pounds of prune plums diverted; and

(5) For prune plums of non-French varieties produced in any country in the area, 1 pound of dried prunes for each 3.50 pounds of prune plums diverted.

Whenever diversion operations for a crop year have been authorized by the Secretary, the Committee shall notify producers, dehydrators, and handlers, known to it of such authorization.

(b) *Eligible diversions.* Eligible diversions shall preclude prune plums from becoming prunes and shall be limited to the following methods: (1) Disposing of harvested prune plums under Committee supervision for nonhuman use at a location and in a manner satisfactory to the Committee; and (2) leaving unharvested the entire production of prune plums from a solid block of bearing trees designated by the producer applying for the diversion. In accordance with § 993.62(c), eligible diversion shall not apply to prune plums which would not, under normal producer practices, be dried and delivered to a handler.

(c) *Applications for diversion*—(1) *By producers.* Each producer desiring to divert prune plums of his own production shall, prior to diversion, file with the Committee a certified application on Form PMC 10.1 "Application for Prune Plum Diversion" containing at least the following information: (i) The name and address of the producer; whether the producer is an owner-operator, share-landlord, share-tenant, or cash tenant; and the name and address of any other person or persons sharing a proprietary interest in such prune plums; (ii) the proposed method of diversion and the location where diversion is to take place; (iii) the quantity and variety of prune plums proposed to be diverted; and (iv) the approximate period of diversion. A deposit fee shall accompany each application and shall be the greater of either $100 or the amount obtained by multiplying the quantity, in tons, of prune plums proposed to be diverted by $3.50.

(2) *By dehydrator as agent.* Any producer, or group of producers, may authorize any dehydrator to act as agent to divert harvested prune plums. Prior to diversion such dehydrator shall submit to the Committee with respect to each producer the certified application on Form PMC 10.1 "Application for Prune Plum Diversion" required by paragraph (c)(1) of this section. A deposit fee shall accompany each application and shall be the greater of either $100 per producer who authorized the dehydrator to act as agent or the amount obtained by multiplying the quantity in tons of prune plums

proposed to be diverted by $3.50: *Provided,* That with respect to any group of four or more producers that authorized the dehydrator to act as agent for the group and the dehydrator so informs the Committee, the deposit fee shall be the greater of either $200 or the amount obtained by multiplying the aggregate quantity in tons of prune plums proposed to be diverted by the group by $3.50.

(3) *Receipt of applications.* The Committee shall establish, and give prompt notice of, a final date for receipt of applications for diversion: *Provided,* That if the Committee determines that the total quantity of prune plums covered by applications received by such date is substantially less than the quantity which the Committee has determined pursuant to paragraph (a) of this section, the Committee may provide such additional time for such receipt of applications as it deems appropriate and establish and give prompt notice of such additional time.

(d) *Approval of applications.* No certificate of diversion shall be issued by the Committee unless it had approved the application covering such diversion.

(1) The Committee's approval of an application shall be in writing, and include at least the following: (i) The details as to the method of diversion to be followed; (ii) the method of appraisal to be used by the Committee to determine the quantity of prune plums diverted; (iii) the lesser of either the quantity specified in the the application for diversion as proposed to be diverted, or any modification of that quantity as a result of any Committee proration of the total quantity proposed to be diverted by all producers; and (iv) such other information as may be necessary to assist the applicant in meeting the requirements of this section, including the conditions of proof of diversion under which diverted prune plums shall receive credit for certification.

(2) If the Committee determines that it cannot approve an application it shall notify the applicant promptly. The Committee shall state the reason for failing to approve the application, and request the applicant to submit, if practicable, an amended application correcting the deficiencies in the original application.

(3) The Committee shall establish, and give prompt notice of a final date by which a producer may modify his approved application including changing the proposed method of diversion and the quantity of prune plums proposed to be diverted: *Provided,* That any change in the proposed method of diversion shall include information on the location where such diversion is to take place and shall be accompanied by a payment of $50 as a service charge, and any increase in the quantity of prune plums proposed to be diverted shall be accompanied by a payment of $4.50 per ton for such increase, of which $3.50 shall be the deposit fee and $1 shall be a service charge.

(4) Whenever an applicant cancels his approved diversion application prior to diversion, no part of the deposit fee covering actual costs incurred in connection with the application shall be refunded except upon approval by the Committee following review of all circumstances in the matter.

(e) *Report of diversion.* (1) When diversion of prune plums has been completed, the diverter (whether producer or dehydrator as agent of a producer) shall submit the required proof of such diversion to the Committee. When the Committee concludes that diversion has been completed pursuant to the requirements of this section, it shall furnish the producer whose prune plums were diverted with a listing of the total quantity of prune plums concluded to be so diverted: *Provided,* That a producer shall be given credit for any quantity of his prune plums diverted in excess of the quantity approved by the Committee pursuant to paragraph (d) of this section but not in excess of 120 percent of such approved quantity and then only to the extent that such creditable excess is already covered by his applicable deposit fee or such fee is increased by an additional deposit to cover such excess.

(2) Upon completion of the computation of dryaway pursuant to paragraph (a) of this section applicable to the diverter's diversion of prune plums, the Committee shall issue a

report of diversion to the producer whose prune plums were diverted for the total quantity, dried weight equivalent, credited for diversion setting forth the computations by which such total quantity was derived.

(f) *Transferable certificate of diversion*—(1) *General.* As hereinafter set forth, transferable certificates of diversion shall be issued by the Committee. Any transferable certificate of diversion issued to a handler that is a cooperative marketing association, or submitted to a handler and accepted by him, shall be returned to the Committee by the handler for credit against the handler's reserve obligation of the crop year in accordance with § 993.57. Such credit shall be based on the amount shown on the certificate, and shall be applied to reduce the handler's holding requirement for such crop year. With respect to such creditable certificate of a handler with a holding requirement prior to issuance or acceptance, as applicable, of the transferable certificate of diversion, such credit shall result in an adjustment downward in the handler's then applicable holding requirement in an amount equal to that computed by applying the applicable salable percentage to the total quantity on such certificate. Any adjustment in a handler's holding requirement shall not affect his obligation, if any, to continue to hold reserve prunes that are undersized prunes. The term "undersized prunes" shall have the same meaning as prescribed by the Secretary for the then current crop year. If the Committee determines that effective administration of diversion operations requires establishment of a final date for submission of transferable certificates of diversion by producers to handlers, or a final date for return of such certificates by handlers to the Committee for crediting against their reserve obligations, or both, it shall establish such dates.

(2) *Issuance to producers.* Except as provided in paragraph (f)(3) of this section, the Committee shall issue transferable certificates of diversion to each producer diverting prune plums and to whom a report of diversion was issued. Prior to issuance of any such transferable certificate of diversion, the producer shall advise the Committee, in writing: (i) Of the name of the handler to whom the transferable certificate of diversion is to be submitted and who is holding reserve prunes referable to prunes received from such producer; and (ii) how much of the quantity shown on his report of diversion he desires to use in lieu of reserve prunes but not in excess of the quantity of reserve prunes referable to prunes received by the handler from such producer. The Committee shall enter on the transferable certificate of diversion the name of the handler and the quantity covered by the certificate. The transferable certificate of diversion shall be endorsed by the producer and the handler prior to its return to the Committee in order to be credited by the Committee against such handler's reserve obligation. If any portion of the quantity shown on the producer's report of diversion remains unused and he desires to transfer a transferable certificate of diversion covering all or any part of such unused portion to another producer, he shall advise the Committee, in writing, of the name and address of such producer, together with the applicable quantity desired to be covered by the transfer, and, if known, the name of the handler to whom such a transferable certificate is to be submitted. However, the quantity to be covered by the transfer shall not exceed the quantity of reserve prunes referable to prunes received by the handler from the transferee-producer. The Committee shall enter on the transferable certificate of diversion the names of the transferee-producer and the handler, and the quantity covered by the certificate. Prior to submission of any such transferred diversion certificate to a handler, the transferee-producer shall advise the Committee, in writing, of the name and address of the handler to whom the transferable certificate is to be submitted and who is holding reserve prunes referable to prunes received from such producer. Such transferred diversion certificate shall be endorsed by both producers and the handler in order to be credited by the Committee against such handler's reserve obligation.

(3) *Issuance to a cooperative marketing association.* In connection with prune plums diverted by producers who are members of a cooperative marketing association, the Committee shall, when so requested by the association, issue the applicable transferable certificates of diversion to it. The quantity entered on the report of diversion of a cooperative producer shall be entered on or annexed to the applicable transferable certificate of diversion issued to the association. Such transferable certificates of diversion shall be returned to the Committee by the association endorsed by an authorized officer of the association in order to be credited by the Committee against the association's reserve obligation.

(4) *Applicability of certain payments.* The provisions of §§ 993.59 and 993.159 governing payments to a handler for necessary services rendered by the handler in connection with reserve prunes shall not be applicable to prunes no longer required to be held as reserve prunes due to a downward adjustment by the Committee in the handler's holding requirement on the basis of applicable transferable certificates of diversion returned to the Committee.

(g) *Costs.* Pursuant to § 993.62(g), the costs pertaining to diversion are to be defrayed by payment of fees by the producer or cooperative marketing association to whom a diversion certificate is issued. After authorized diversion operations for a crop year are completed, the Committee shall ascertain its costs of diversion operations during such crop year. If the total amount represented by the deposit fees which accompanied the applications for diversion exceeds such costs, each producer, and each cooperative marketing association, entitled thereto shall receive a proportionate refund of the net amount. Such refund shall be calculated in the same proportion as the quantity of prune plums diverted by each such producer, and each such cooperative marketing association, is to the total quantity of prune plums diverted: *Provided,* That the Committee may prescribe a minimum charge to cover costs of processing each application for diversion submitted to it.

[35 FR 12323, Aug. 1, 1970, as amended at 36 FR 15039, Aug. 12, 1971; 48 FR 57261, Dec. 29, 1983]

Disposition of Reserve Prunes

§ 993.165 Disposition of reserve prunes.

(a) *General.* For purposes of § 993.65(a)(2), normal outlets for salable prunes (herein referred to as "normal outlets") and outlets noncompetitive with normal outlets for salable prunes (herein referred to as "noncompetitive outlets") are defined in paragraphs (b) and (c) of this section.

(b) *Normal outlets.* "Normal outlets" means all outlets not specifically set forth in paragraph (c) of this section as noncompetitive outlets.

(c) *Noncompetitive outlets.* "Noncompetitive outlets" means (1) the U.S. Government or any agency thereof and any State or local government, except when such outlets are normally serviced through regular commercial trade channels, (2) any foreign government or any agency thereof, except any which normally is serviced through regular commercial trade channels, (3) any foreign country with an average of annual commercial imports of California prunes of less than 5 tons, based on imports during the most recent 5 years, (4) diced prunes for use as an ingredient in, or the manufacture of, food products for human consumption, other than for use in the manufacture of prune juice, prune concentrate, baby food, puree, butter, jam, and low moisture nuggets, granules, and powder, (5) charities, (6) research or educational activities, and (7) animal feed, distillation, and other salvage use.

[31 FR 5751, Apr. 14, 1966, as amended at 37 FR 5600, Mar. 17, 1972]

Reports and Books and Other Records

§ 993.172 Reports of holdings, receipts uses, and shipments.

(a) *Holdings as of March 31.* Each handler shall, on or before the 15th day of April, file with the committee a signed report of holdings of prunes which have not been inspected or received by him as a handler as of March 31. The report shall show for

such prunes the name and address of the producer or dehydrator, the date of each identification tag assigned to such prunes, the numbers and dates of door receipts or weight certificates or any other identifying documents assigned to such prunes, the net weight shown on each, the total net weight of all prunes so held, and the name and address of the handler making the report.

(b) *Receipts by handlers.* Each handler shall file with the committee, for each month, not later than the 5th working day of the next succeeding month, a signed report on Form PMC 11.1, "New Crop Supply and Inbound Prune Report", containing at least the following information: (1) The date, the name and address of the handler, and the period covered by the report; and (2) the total tonnage received during the month from each of (i) producers and dehydrators, (ii) other handlers, including interhandler transfers, and (iii) sources other than producers, dehydrators and other handlers.

(c) [Reserved]

(d) *Shipments by handlers.* Each handler shall file with the Committee for each month, not later than the 5th working day of the next succeeding month, a signed report on Form PMC 12.1, "Reports of Shipments," reporting shipments of prunes during the crop year through the last day of the immediately preceding month. Such report shall contain at least the following information:

(1) The date, the name, and address of the handler, and the period covered by the report;

(2) The poundages of prunes shipped or otherwise disposed of, other than shipments to or for the account of other handlers, as follows: (i) Domestic outlets segregated by uses (including Federal Government agencies); (ii) export markets, segregated by countries; (iii) both domestic and export totals segregated by type of pack (carton, visipak, and other), and (iv) pitted prunes (pitted weight) segregated as to total to domestic outlets and total to export markets;

(3) The total poundage shipped to or for the account of other handlers, including interhandler transfers; and

(4) The total poundage of prunes not covered by, or excluded from, the definition of the term "prunes" (§ 993.5) shipped.

(e) *Holding of reserve prunes.* Upon request of the committee, a handler shall file with the committee, within 10 calendar days thereafter, a certified report on Form PMC 4.1, "Reserve Prunes Held by Handler", containing the following information as of the date specified by the committee in its request: (1) The date and name and address of the handler; (2) the effective date of the report; and (3) the tonnages of reserve prunes physically held by or for the handler, itemized by plants, together with the location of the plants and itemized by the tonnages and average size count by category held at each such plant.

[26 FR 8281, Sept. 2, 1961, as amended at 30 FR 13311, Oct. 20, 1965; 31 FR 14988, Nov. 29, 1966; 33 FR 19162, Dec. 24, 1968; 48 FR 57261, Dec. 29, 1983; 49 FR 1469, Jan. 12, 1984]

§ 993.173 Reports of accounting.

(a) *Independent handler's reports of accounting.* Within 10 days (exclusive of Saturdays, Sundays, and legal holidays) after a handler, other than a non-profit cooperative agricultural marketing association, makes an accounting or settlement with a producer or dehydrator for prunes delivered to him, he shall submit to the committee a copy of the accounting or settlement record, which shall contain the following information: (1) The names and addresses of the producer or dehydrator, any other person having a financial interest in the prunes, and the handler; (2) the date of the accounting or settlement; (3) the contract or account number; (4) an itemized statement listing each lot of prunes in the delivery, showing the date received, receiving point, weight certificate, or door receipt number, inspection certificate number, variety, crop year of production, and the net weight, if any, of prunes shown by the applicable incoming inspection certificate to be disposed of for nonhuman consumption in accordance with § 993.150(g); (5) the total net weight of prunes to be set aside for nonhuman consumption, and

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the total net weight received; and (6) the total net weight of each lot, itemized as to salable and reserve prunes by category as developed from inspection certificates.

(b) *Cooperative marketing associations' reports of accounting.* Upon written notice by the committee, nonprofit cooperative agricultural marketing associations which are handlers shall file with the committee within 10 days (exclusive of Saturdays, Sundays, and legal holidays) thereafter a signed cumulative report of the prunes received from its members and any other producers or dehydrators for whom it performs handling services, which shall contain the following information: (1) The name and address of the association and the date of the report; (2) the aggregate net weight of prunes, as shown by the applicable incoming inspection certificates, required to be disposed of for nonhuman consumption in accordance with § 993.150(g); and (3) the total net weight of prunes received, itemized by crop years of production, and itemized as to salable and reserve prunes by category as developed from inspection certificates.

(c) *Carryover and marketing policy information.* Upon request of the committee, a handler shall within 10 days (exclusive of Saturdays, Sundays, and legal holidays) thereafter, file with the committee a signed report on Form PMC 14.1 "Report of Carryover and Marketing Policy Information," containing such of the following items of information as may be requested by the committee: (1) The tonnage of prunes held by the handler by size and grade, as of the date specified in the committee's request and the tonnage of reserve prunes by size in each category; and (2) the handler's estimate of the tonnage of prunes held by producers and dehydrators from whom the handler received prunes during the current or preceding crop year, of the tonnage and quality and size of prunes expected to be produced by such producers and dehydrators during the current or following crop year, of current prices being received by producers, dehydrators, and handlers, and of the probable trade demand.

[30 FR 13311, Oct. 20, 1965, as amended at 35 FR 11381, July 16, 1970; 37 FR 15981, Aug. 9, 1972; 48 FR 57261, Dec. 29, 1983]

§ 993.174 Records.

Each handler shall maintain such records as are necessary to furnish the reports required to be submitted to the Committee by him under this subpart including, but not limited to, records of all transactions on prunes received, held and disposed of by him, and he shall retain such records for at least two years after the end of the crop year in which the applicable transaction occurred.

[26 FR 8281, Sept. 2, 1961; 26 FR 8483, Sept. 9, 1961. Redesignated at 30 FR 13312, Oct. 20, 1965]

NOTE: After January 1, 1979, "Budget of Expenses and Rate of Assessment" regulations (e.g. sections .300 through .399) and "Marketing percentage" regulations (e.g. sections .200 through .299) which are in effect for a year or less, will not be carried in the Code of Federal Regulations. For FEDERAL REGISTER citations affecting these regulations, see the "List of CFR Sections Affected" in this volume.

Subpart—Undersized Prune Regulation

§ 993.400 Modifications.

Pursuant to the authority in § 993.52, the provisions in § 993.49(c) prescribing size openings for undersized prune regulations are hereby modified to permit larger size openings. For French prunes, any undersized regulation may prescribe an opening of $^{33}/_{64}$ of an inch or $^{21}/_{32}$ of an inch; for non-French prunes, any undersized regulation may prescribe an opening of $^{35}/_{64}$ of an inch or $^{36}/_{64}$ of an inch.

[40 FR 42531, Sept. 15, 1975]

Subpart—Pack Specification as to Size

SOURCE: 26 FR 8281, Sept. 2, 1961, unless otherwise noted.

DEFINITIONS

§ 993.501 Consumer package of prunes.

"Consumer package of prunes" means "consumer package" as defined in § 993.22.

§ 993.502 Size count.

"Size count" means the count or number of prunes per pound.

§ 993.503 Size category.

"Size category" means each of the size categories listed in § 993.515 and fixes the range or the limits of the various size counts.

§ 993.504 In-line inspection.

"In-line inspection" means inspection of prunes where samples are drawn from a flow of prunes prior to packaging.

§ 993.505 Floor inspection.

"Floor inspection" means inspection of prunes where samples are drawn from packaged prunes or from unpackaged prunes that are held in packing containers for later packaging.

§ 993.506 Lot.

"Lot" for the purposes of this subpart shall have the same meaning as defined in § 993.104(b) of the Subpart—Administrative Rules and Regulations.

SPECIFICATIONS AS TO SIZE

§ 993.515 Size categories.

For the purpose of this part, the pack specifications prescribed for the packing of prunes in consumer packages shall, subject to the limitation prescribed in § 993.516, be according to those commercially recognized size categories as are listed in paragraph (a) of this section by numerical designation or in paragraph (b) of this section by nomenclature designation.

(a) *Numerical designations.* Each of the following is a numerical size category described by the range of the size counts of prunes per pounds included in the respective size categories expressed as follows or in an applicable equivalent range expressed in the metric system per 500 grams: 15/20, 15/22, 18/24, 20/30, 25/35, 30/40, 35/45, 40/50, 50/60, 60/70, 70/80, 75/85, 80/90, and 90/100.

(b) *Nomenclature designations.* Each of the following is a nonmenclature size category:

(1) Extra large;

(2) Large;

(3) Medium; and

(4) Small, breakfast, petite, or economy.

(c) *Nomenclature designations defined.* As used in paragraph (b) of this section:

(1) "Extra large" means any size count which falls within the range of 25 to 40 prunes, inclusive, per pound;

(2) "Large" means any size count which falls within the range of 40 to 60 prunes, inclusive, per pound;

(3) "Medium" means any size count which falls within the range of 60 to 85 prunes, inclusive, per pound; and

(4) "Small", "breakfast", "petite", or "economy" means any size count which falls within the range of 85 to 100 prunes, inclusive, per pound.

[26 FR 8281, Sept. 2, 1961, as amended at 49 FR 35930, Sept. 13, 1984]

§ 993.516 Tolerances and limitations.

With respect to in-line inspections and floor inspections, prunes in a particular lot shall, subject to the other applicable requirements of this section, be considered as being according to a particular size category prescribed in § 993.515 if the average size count of the prunes in such lot falls within the range of the size counts specified for such size category, and the count per pound of 10 ounces of the smallest prunes in a sample of 100 ounces varies from the count per pound of 10 ounces of the largest prunes in such sample by no more than 45 points.

LABELING

§ 993.517 Identification.

The size category of the prunes in any lot shall be clearly marked by the handler on each consumer package of such prunes, on the parts or panels of the package or label which are normally presented in retail display, in terms of the applicable numerical or nomenclature designation prescribed in § 993.515, which designation shall

not be lacking in prominence and conspicuousness. Any handler may, at his option, clearly mark on such consumer package additional information describing in numerical terms the average size count, or particular range of size counts, of the prunes in such lot so long as such numerical terms fall within the range of the size counts of the applicable numerical or nomenclature designation and do not tend to be deceptive as to the actual average size count, or range of the size counts, of the prunes in such lot. Descriptive terms other than synonyms of the prescribed nomenclature designation or words of like connotation, describing the style of pack, variety of prune, or other item of commercial significance may also be marked on the consumer package. Prunes in any lot of which the maximum size count is less than 25 shall be clearly marked by the handler in terms of the applicable numerical designation prescribed in § 993.515(a); and the handler may use nomenclature terms descriptive of size other than the nomenclature designations prescribed in § 993.515(b).

[26 FR 8281, Sept. 2, 1961, as amended at 46 FR 38070, July 24, 1981]

COMPLIANCE

§ 993.518 Compliance.

Whenever the season average price to producers for prunes is below the parity level specified in section 2(1) of the act, no handler shall ship consumer packages of prunes unless such prunes are packed and labeled in accordance with the specifications prescribed in this subpart; and whether prices are above or below parity, no handler shall use the nomenclature designations in § 993.515(b) to describe size categories other than those prescribed pursuant to § 993.515(c).

Subpart—Grade Regulations

§ 993.601 More restrictive grade regulation.

(a) *Incoming and outgoing regulation.* Whenever the estimated season average price to producers for prunes does not exceed the parity level specified in section 2(1) of the act, the minimum standards which handlers' receipts of natural condition prunes are required to meet pursuant to § 993.49(a) shall be the standards specified in § 993.49(a) and § 993.97I, and the minimum standards which handlers' shipments or other final dispositions of prunes are required to meet pursuant to § 993.50(a) shall be the applicable standards set forth in § 993.97 *Exhibit A; minimum standards,* except that the following combined tolerance allowance for certain defects shall apply in lieu of the tolerance allowance prescribed in paragraph I C(5) of § 993.97 and also in lieu of that prescribed in paragraph II C(6) of § 993.97:

The combined tolerance allowance for off-color, inferior meat condition, end cracks, fermentation, skin or flesh damage, scab, burned, mold, imbedded dirt, insect infestation, and decay shall not exceed fifteen percent (15%), except that the first eight percent (8%) of end cracks shall be given one-half value and any additional percentage of end cracks shall be given full value.

(b) *Above parity situations.* Whenever the estimated season average price to producers for prunes exceeds the parity level specified in section 2(1) of the act, the minimum standards set forth in § 993.97 shall apply in their entirety.

[27 FR 7540, Aug. 1, 1962]

§ 993.602 Maximum tolerances.

In lieu of the provision prescribed in I C of § 993.97 that the tolerance allowances prescribed therein shall be on a weight basis, the tolerance allowance percentage for each defect or group of defects in I C of § 993.97 shall be derived by dividing the number of prunes in the applicable sample affected with the applicable defect(s) by the total number of prunes in such sample.

[39 FR 30344, Aug. 22, 1974]

PART 999—SPECIALTY CROPS; IMPORT REGULATIONS

Sec.

999.1 Regulation governing the importation of dates.
999.100 Regulation governing imports of walnuts.

Sec.

999.200 Regulation governing the importation of prunes.
999.300 Regulation governing importation of raisins.
999.400 Regulation governing the importation of filberts.

AUTHORITY: Secs. 1-19, 48 Stat. 31, as amended; 7 U.S.C. 601-674.

§ 999.1 Regulation governing the importation of dates.

(a) *Definitions.* (1) "Dates in retail packages" means whole or pitted dates, other than dates prepared or preserved, wrapped or packaged for sale at retail.

(2) "Dates for packaging" means whole or pitted dates in bulk containers which are to be repacked, in whole or part, in the United States as dates in retail packages.

(3) "Bulk container" means any container of dates which, together with the dates therein, weighs more than ten pounds.

(4) "Dates for processing" means any dates for use in a bakery, confectionery, or other product and includes dates coated with a substance materially altering their color.

(5) "Dates prepared or preserved" means dates processed into a confection or other product, dates coated with a substance materially altering their color, or dates prepared for incorporation into a product by chopping, slicing, or other processing which materially alters their form.

(6) "Person" means any individual, partnership, corporation, association, or other business unit.

(7) "Fruit and Vegetable Division" means the Fruit and Vegetable Division of the Consumer and Marketing Service, United States Department of Agriculture, Washington, D.C. 20250.

(8) "USDA inspector" means an inspector of the Processed Products Standardization and Inspection Branch, Fruit and Vegetable Division or any other duly authorized employee of the USDA.

(9) "Inspection certificate" means a written statement or memorandum report issued by a USDA inspector setting forth in addition to appropriate descriptive information the quality and condition of the product inspected, and in the case of imported dates, a statement of meeting or failing, as applicable, the U.S. import requirements under section 8e of the AMA Act of 1937.

(10) "Importation" means release from custody of United States Bureau of Customs.

(b) *Grade requirements.* (1) Except as provided in paragraph (d) of this section, the importation into the United States of any lot of dates for packaging or dates in retail packages is prohibited unless the dates are wholesome and unadulterated and meet the following grade requirements which are determined to be comparable to those imposed upon domestic dates handled pursuant to Order No. 987, as amended (Part 987 of this chapter: The whole or pitted dates in the lot are of one variety, and are of such quality and condition that upon inspection on the basis of a representative sample thereof, with hydration (of the sample) in accordance with good commercial practice or without any hydration, the dates possess a reasonably good color, are reasonably uniform in size, are reasonably free from defects, possess a reasonably good character, and score not less than 80 points when scored in accordance with the scoring system applicable to U.S. Grade B dates, as prescribed in the U.S. Standards for Grades of Dates (§§ 52.1001-52.1011 of this chapter): *Provided,* That not more than 25 percent, by weight, of the dates may possess semidry or dry calyx ends except that not more than 5 percent, by weight, of the dates may possess dry calyx ends: *And provided further,* That in determining the grade for pitted dates, the pitted dates shall not be scored as damaged because of the longitudinal slit caused by removing the pit or the mashing resulting therefrom unless the flesh is seriously torn or mangled.

(2) Compliance with the grade requirements shall be determined on the basis of an inspection and certification by a USDA inspector.

(c) *Inspection and certification requirements*—(1) *Inspection.* Inspection shall be performed by USDA inspectors in accordance with the Regulations Governing the Inspection and Certification of Processed Fruits and

Vegetables and Related Products (Part 52 of this title). The cost of each such inspection and related certification shall be borne by the applicant. Applications for inspection shall be made at least 10 days in advance and be accompanied by, or there shall be submitted promptly thereafter, either an on-board bill of lading designating the lots to be inspected by USDA inspectors and those to be entered as dates for processing, or a list of such lots and their identifying marks.

(2) *Certification.* Each lot of dates inspected in accordance with paragraph (c)(1) of this section shall be covered by an inspection certificate. Each such certificate shall set forth, among other things, the following:

(i) The date and place of inspection.

(ii) The name of the applicant.

(iii) The variety, quantity, and identifying marks of the lot inspected.

(iv) The statement, if applicable: "Meets U.S. import requirements under section 8e of the AMA Act of 1937".

(v) If the lot fails to meet the import requirements, a statement to that effect and the reasons therefor.

(d) *Exemptions.* Notwithstanding any other provisions of this section, any lot of dates for importation which in the aggregate does not exceed 70 pounds and any dates that are so denatured as to render them unfit for human consumption may be imported exempt from the provisions of this section.

(e) *Importation.* No person may import dates into the United States unless he first files with the Collector of Customs at the port at which the customs entry is filed, as a condition of each such importation, either an inspection certificate or an executed "Dates—Section 8e Entry Declaration," prescribed in paragraph (e)(2) of this section as Date Form No. 1.

(1) *Dates for packaging and dates in retail packages.* No person may import any lot of dates for packaging or dates in retail packages unless the dates are covered by an inspection certificate containing the statement as to meeting the requirements set forth in paragraph (c)(2)(iv) of this section.

(2) *Dates for processing and dates prepared or preserved—importation.* Any person may import dates for processing and dates prepared or preserved exempt from the grade, inspection, and certification requirements of this section if the importer first files as a condition of such importation an executed Date Form No. 1 "Dates—Section 8e Entry Declaration." The importer shall promptly transmit a copy of the executed Date Form No. 1 to the Fruit and Vegetable Division. The following is prescribed as Date Form No. 1:

DATE FORM NO. 1

Dates—Section 8e Entry Declaration

I certify to the U.S. Department of Agriculture and the Bureau of Customs that none of the dates being imported and which are identified below are dates for packaging or dates in retail packages.

1. Name of vessel:
2. Country of origin of dates:
3. Date of arrival:
4. City of arrival:
5. Unlading pier:
6. Entered as dates for processing—

Lot or chop mark	Number of containers	Total net weight
		lbs.
		lbs.
		lbs.
		lbs.

(List additional lots on added page)

7. Entered as dates prepared or preserved—

Lot or chop mark	Number of containers	Total net weight
		lbs.
		lbs.

I agree to obtain from each person to whom any of the dates listed under item 6 are delivered, an executed Date Form No. 2 "Dates for Processing—Section 8e Certification of Processor or Reseller" and to file the same with the Fruit and Vegetable Division, Consumer and Marketing Service, United States Department of Agriculture, Washington 25, D.C., not later than the fifth day of the month following the month in which the dates were delivered.

Dated _____

Name of firm _____

Address _____

Signature _____
Title _____

Distribution

Original—Collector of Customs.
Copy—Fruit and Vegetable Division.
Copy—Food and Drug Administration.

(3) *Dates for processing—Sale by importer.* No importer or other person may import, sell, or use any dates for processing other than for use as set forth in paragraph (a)(4) of this section or as otherwise permitted by this section. Each importer of dates for processing shall obtain from each purchaser, no later than the time of delivery to such purchaser, and file with the Fruit and Vegetable Division not later than the fifth day of the month following the month in which the dates were delivered, an executed "Dates for Processing—Section 8e Certification of Processor or Reseller," prescribed in this paragraph as Date Form No. 2, which form is as follows:

DATE FORM NO. 2

Dates for Processing—Section 8e Certification of Processor or Reseller

I hereby certify to the U.S. Department of Agriculture that I have acquired the dates covered by this certification; that I will use or sell them for use only in bakery, confectionery, or other products as permitted by the Regulation Governing Importation of Dates (7 CFR 999.1); and that I am: (check one)

—— processor (user of dates for processing)
—— reseller (dealer in dates for processing)
1. Date of purchase _____
2. Place of purchase _____
3. Name and address of importer or seller —

_____

4. Dates acquired:

Number of containers	Total net weight
.....	lbs.
.....	lbs.
.....	lbs.
.....	lbs.

Dated _____
Name of firm _____
Address _____
Signature _____
Title _____

Distribution

Original—Fruit and Vegetable Division.
Copy—Purchaser.

(4) *Dates for processing—sale by other than importer.* Each wholesaler or other reseller of dates for processing should, for his protection, obtain from each purchaser and hold in his files a Date Form No. 2 certification covering each sale or all sales of a calendar year.

(f) *Filing and retention of certificates.* The executed Date Form No. 2 "Dates for Processing—Section 8e Certification of Processor or Reseller" required to be filed pursuant to this section shall be executed in not less than three copies, of which one shall be filed with the Fruit and Vegetable Division not later than the fifth day of the month immediately following the month of delivery of the dates covered thereby, one shall be retained by the importer and one shall be retained by the person accepting delivery.

(g) *Reclassification.* Any dates submitted for importation as dates for packaging or dates in retail packages that fail to meet the import requirements of this section may, upon execution of Date Form No. 1 "Dates—Section 8e Entry Declaration," be resubmitted for importation as dates for processing subject to the limitations of paragraph (j) of this section. Subsequent to importation, (1) any dates for processing other than dates that were resubmitted for importation in accordance with the preceding sentence and (2) any dates for packaging which through unintentional error were submitted for importation as dates for processing, either category having been covered by an executed Date Form No. 1, may if still held by the importer and if certified by a USDA inspector as meeting the requirements of this section for dates for packaging, be so reclassified and used. The reclassification to dates for packaging shall not be applicable to any dates that were falsely classified, other than through unintentional error, as dates for processing and submitted as such for importation.

(h) *Reconditioning.* Nothing contained in this section shall preclude the reconditioning of failing lots of

dates, prior to importation, so that such dates may be made eligible to meet the grade requirements prescribed in paragraph (b) of this section.

(i) *Books and records.* Each person subject to this section shall maintain true and complete records of his transactions with respect to imported dates. Such records and copies of executed forms shall be retained for not less than two years subsequent to the calendar year of acquisition. The Secretary, through his duly authorized representatives, shall have access to any such person's premises during regular business hours and shall be permitted at any such times to inspect such records and any dates held by such person.

(j) *Other restrictions.* The provisions of this section do not supersede any restrictions or prohibitions on the importation of dates under the Plant Quarantine Act of 1912, the Federal Food, Drug, and Cosmetic Act, or any other applicable laws or regulations or the need to comply with applicable food and sanitary regulations of city, county, State, or Federal agencies.

(k) *Compliance.* Any person who violates any provision of this section shall be subject to a forfeiture in the amount prescribed in section 8a(5) of the Agricultural Marketing Agreement Act of 1937, as amended (secs. 1-19, 48 Stat. 31, as amended; 7 U.S.C. 601-674), or, upon conviction, a penalty in the amount prescribed in section 8c(14) of said act, or to both such forfeiture and penalty. False representations to an agency of the United States on any matter within its jurisdiction, knowing it to be false, is a violation of 18 U.S.C. 1001 which provides for a fine or imprisonment or both.

[28 FR 3469, Apr. 10, 1963, as amended at 31 FR 960, Jan. 25, 1966; 33 FR 15986, Oct. 31, 1968; 36 FR 6736, Apr. 8, 1971]

§ 999.100 Regulation governing imports of walnuts.

(a) *Definitions.* (1) "Walnuts" means all walnuts commonly known as English or Persian walnuts (Juglans regia).

(2) "Inshell walnuts" means walnuts, the kernels or edible portions of which are contained in the shell.

(3) "Shelled walnuts" means the kernels of walnuts after the shells are removed.

(4) "Person" means any individual, partnership, corporation, association, or other business unit.

(5) "USDA Inspector" means any Federal or Federal-State inspector of the Fresh Products Standardization and Inspection Branch of the Fruit and Vegetable Division, Consumer and Marketing Service, United States Department of Agriculture.

(6) "Importation of walnuts" means the release of walnuts from the custody of the United States Customs Service.

(b) *Grade and size regulations.* No person may import walnuts (Juglans regia) into the United States unless such walnuts have been inspected and certified by a USDA inspector as meeting the following requirements:

(1) *Inshell walnuts.* All inshell walnuts shall be of a quality equal to or better than the requirements of U.S. No. 2 and "baby" size as prescribed in the United States Standards for Walnuts (Juglans regia) in the Shell (§§ 51.2945-51.2966 of this title); or

(2) *Shelled walnuts.* All shelled walnuts shall be of a quality equal to or better than the requirements for U.S. Commercial Grade as prescribed in the United States Standards for Shelled Walnuts (Juglans regia) (§§ 51.2275-51.2294 of this title excluding §§ 51.2278(b), 51.2284 and 51.2285) effective January 25, 1959, except that the minimum size shall be pieces not more than five percent of which will pass through a round opening ¾ inch in diameter and no other size requirements shall apply.

(c) *Inspection and certification.* (1) All inspections and certifications required by paragraph (b) of this section shall be made by USDA inspectors in accordance with the regulations governing the inspection and certification of fresh fruits, vegetables, and other products (Part 51 of this title). The cost of inspection and certification shall be borne by the applicant.

(2) Each inspection certificate shall set forth among other things the following:

(i) The date and place of inspection;

(ii) The name of the applicant;

(iii) The name of the importer;
(iv) The quantity and identifying marks of the container; and
(v) The statement, if applicable, "Meets U.S. import requirements under section 8e of the Agricultural Marketing Agreement Act of 1937".

(3) Whenever walnuts are offered for inspection, the applicant shall furnish any labor and pay any costs incurred in moving and opening containers as may be necessary for proper sampling and inspection. The applicant shall also furnish the USDA inspector the entry number and such other identifying information for each lot as he may request.

(4) Inspection must be completed prior to the importation of walnuts. To avoid delay the applicant should make advance arrangements with the USDA inspection office.

(d) *Reconditioning prior to importation.* Nothing contained in this section shall be deemed to preclude reconditioning walnuts prior to importation, in order that such walnuts may be made eligible to meet the grade and size regulations prescribed in paragraph (b) of this section.

(e) *Minimum quantity.* Notwithstanding any other provision of this section, the importation of any lot of walnuts which does not exceed, in net weight, 60 pounds of shelled walnuts or 115 pounds of inshell walnuts shall be exempt from the requirements of this section.

(f) *Other import requirements.* The provisions of this section do not supersede any restrictions or prohibitions on walnuts under the Federal Plant Quarantine Act of 1912, or any other applicable laws or regulations of city, county, State, or Federal Agencies including the Federal Food, Drug and Cosmetic Act.

(g) *Compliance.* Any person violating any of the provisions of this regulation is subject to a forfeiture in the amount prescribed in section 608a(5) of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), or, upon conviction, a penalty in the amount prescribed in section 608c(14) of said act, or to both such forfeiture and penalty. False representations in any matter within the jurisdiction of any agency of the United States, knowing it to be false, is a violation of 18 U.S.C. 1001 which provides for a fine or imprisonment or both.

[29 FR 230, Jan. 9, 1964, as amended at 40 FR 29263, July 11, 1975; 41 FR 2075, Jan. 14, 1976; 42 FR 35146, July 8, 1977]

§ 999.200 Regulation governing the importation of prunes.

(a) *Definitions.* (1) "Prunes" means and includes all sun-dried or artifically dehydrated plums, of any type or variety, produced from plums, except: (i) Sulfur-bleached prunes which are produced from yellow varieties of plums and are commonly known as silver plums; and (ii) plums which have not been dried or dehydrated to a point where they are capable of being stored prior to packaging, without material deterioration or spoilage unless refrigeration or other artificial means of preservation are used, and so long as they are treated by a process which is in conformity with, or generally similar to, the processes for treatment of plums of that type which have been developed or recommended by the Food Technology Division, College of Agriculture, University of California, for the specialty pack known as "high moisture content prunes", but this exception shall not apply if and when such plums are dried to the point where they are capable of being stored without material deterioration or spoilage, refrigeration or other artificial means of preservation.

(2) "Standard prunes" means any lot of prunes meeting the grade and size requirements prescribed in paragraph (b)(1) of this section.

(3) "Manufacturing grade substandard prunes" means any lot of prunes which meets the grade requirements prescribed in paragraph (b)(2) of this section but fails to meet the requirements for standard prunes.

(4) "Size" means the number of prunes contained in a pound.

(5) "Person" means any individual, partnership, corporation, association, or other business unit.

(6) "Fruit and Vegetable Division" means the Fruit and Vegetable Division of the Consumer and Marketing

Service, U.S. Department of Agriculture, Washington, D.C. 20250.

(7) "USDA inspector" means an inspector of the Processed Products Standardization and Inspection Branch, Fruit and Vegetable Division, on any other duly authorized employee of the USDA.

(8) "Importation" means release from custody of the U.S. Bureau of Customs.

(9) "Undersized prunes" means those prunes that pass freely through a round opening 23/32 of an inch in diameter.

(b) *Grade and size requirements.* (1) Except as provided in paragraph (b)(2) of this section or paragraph (d) of this section, no person may import any lot of prunes into the United States unless the prunes are inspected and an inspection certificate issued with respect thereto, and the lot meets the applicable grade requirements specified in exhibit A of this section and the average count (i.e., number) of the prunes in such lot is 100 or less per pound. Such grade requirements are the same as those in effect pursuant to Order No. 993, as amended (Part 993 of this chapter), regulating the handling of dried prunes produced in California, and the size requirement is determined to be comparable to that established under said Order No. 993, as amended. In determining whether any lot conforms to the size requirement, the following tolerance shall apply: In a sample of 100 ounces, the count per pound of 10 ounces of smallest prunes may not vary from the count per pound of 10 ounces of the largest prunes by more than 45 points.

(2) Any person may import any lot of prunes, except any lot containing undersized prunes, into the United States for use in human consumption outlets as prune products in which the prunes lose their form and character as prunes by conversion prior to consumption if the prunes are inspected and an inspection certificate issued with respect thereto, and each lot meets the grade requirements set forth in paragraphs (1), (2), and (3) of Exhibit A of this section, and the importer first files as a condition of such importation an executed "Prune Form No. 1 Prunes—Section 8e Entry Declaration".

(c) *Inspection and certification requirements*—(1) *Inspection.* Inspection shall be performed by a USDA inspector in accordance with the regulations governing inspection and certification of processed fruits and vegetables, processed products thereof, and certain other processed food products (Part 52 of this title). The cost of each such inspection and related certification shall be borne by the applicant.

(2) *Certification.* Each lot of prunes inspected in accordance with paragraph (c)(1) of this section shall be covered by an inspection certificate. Each such certificate shall set forth, among other things, the following:

(i) The date and place of inspection.

(ii) The name of the applicant.

(iii) The quantity and identifying marks of the lot inspected.

(iv) The statement, as applicable: "Meets U.S. import requirements for standard prunes under section 8e of the AMA Act of 1937"; "Meets U.S. import requirements for manufacturing grade substandard prunes under section 8e of the AMA Act of 1937"; or "Fails to meet U.S. import requirements for prunes under section 8e of the AMA Act of 1937".

(v) If the lot fails to meet the import requirements, a statement of the reason therefor.

(d) *Exemptions.* Notwithstanding any other provisions of this section, the importation of any lot of prunes which in the aggregate does not exceed 150 pounds, net weight, and any prunes that are so denatured as to render them unfit for human consumption shall be exempt from the requirements of this section.

(e) *Additional requirements*—(1) *General.* Prior to importation of any prunes, the person importing such prunes shall file an inspection certificate with the Collector of Customs at the port at which the customs entry is filed. In addition, if such prunes are manufacturing grade substandard prunes, such person shall also file with the Collector of Customs an executed "Prunes—Section 8e Entry Declaration," prescribed in paragraph (e)(2) of this section as Prune Form No. 1. Promptly after such filing, such

person shall transmit a copy of this form to the Fruit and Vegetable Division. No person may import, sell, or use any manufacturing grade substandard prunes other than for use as set forth in paragraph (b)(2) of this section. Each person importing manufacturing grade substandard prunes shall obtain from each purchaser, no later than the time of delivery to such purchaser, and file with the Fruit and Vegetable Division not later than the 5th day of the month following the month in which the prunes were delivered, an executed "Prunes—Section 8e Certification of Processor or Reseller," prescribed in paragraph (e)(3) of this section as Prune Form No. 2. One copy of this executed form shall be retained by the importer and one copy shall be retained by the purchaser.

(2) *Prune Form No. 1.* The following is prescribed as Prune Form No. 1:

PRUNE FORM NO. 1

PRUNES—SECTION 8e ENTRY DECLARATION

I certify to the U.S. Department of Agriculture and the Bureau of Customs that none of the manufacturing grade substandard prunes being imported and which are identified below will be used other than in manufacturing in which the prunes lose their form and identity as prunes.

1. Name of vessel: _____
2. Country of origin of prunes: _____
3. Date of arrival: _____
4. City of arrival: _____
5. Unloading pier: _____
6. Substandard Prunes Entered: _____

Lot or chop mark	Number of containers	Total net weight (lbs.)

I agree to obtain from each person to whom any of the manufacturing grade substandard prunes listed under item 6 are delivered, an executed Prune Form No. 2 (Prunes—Section 8e Certification of Processor or Reseller) and to file the same with the Fruit and Vegetable Division, Consumer and Marketing Service, U.S. Department of Agriculture, Washington, D.C. 20250, not later than the 5th day of the month following the month in which the prunes were delivered.

Dated: _____
Name of firm: _____
Address: _____
Signature: _____
Title: _____

(3) *Prune Form No. 2.* The following is prescribed as Prune Form No. 2:

PRUNE FORM NO. 2

PRUNES—SECTION 8e CERTIFICATION OF PROCESSOR OR RESELLER

I hereby certify to the U.S. Department of Agriculture that I have acquired the manufacturing grade substandard prunes covered by this certification; that I will use or sell them for use only in manufacturing in which the prunes lose their form and identity as prunes as permitted by the Regulation Governing the Importation of Prunes (7 CFR 999.200); and that I am: (check one or both if applicable)

——processor (user of prunes for manufacturing).

——reseller (dealer in prunes for manufacturing).

1. Date of purchase: _____
2. Place of purchase: _____
3. Name and address of importer or seller: —
4. Prunes acquired: _____

Number of containers	Total net weight (lbs.)

Dated: _____
Name of firm: _____
Address: _____
Signature: _____
Title: _____

(4) *Manufacturing Grade Substandard Prune—sale by other than importer.* Each wholesaler or other reseller of manufacturing grade substandard prunes should, for his protection, obtain from each purchaser and hold in his files an executed Prune Form No. 2 covering each sale during the calendar year.

(f) *Reconditioning.* Nothing contained in this section shall preclude the reconditioning of failing lots of prunes, prior to importation, so that such prunes may be made eligible to meet the grade requirements pre-

scribed pursuant to paragraph (b) (1) or (2) of this section.

(g) *Books and records.* Each person subject to this section shall maintain true and complete records of his transactions with respect to imported prunes. Such records and copies of executed forms shall be retained for not less than 2 years subsequent to the calendar year of acquisition. The Secretary, through his duly authorized representatives, shall have access to any such person's premises during regular business hours and shall be permitted at any such times to inspect such records and any prunes held by such person.

(h) *Other restrictions.* The provisions of this section do not supersede any restrictions or prohibitions on the importation of prunes under the Plant Quarantine Act of 1912, the Federal Food, Drug and Cosmetic Act, or any other applicable laws or regulations or the need to comply with applicable food and sanitary regulations of city, county, State, or Federal agencies.

(i) *Compliance.* Any person who violates any provision of this section shall be subject to a forfeiture in the amount prescribed in section 8a(5) of the Agricultural Marketing Agreement Act of 1937, as amended (secs. 1-19, 48 Stat. 31, as amended; 7 U.S.C. 601-674), or, upon conviction, a penalty in the amount prescribed in section 8c(14) of said act, or to both such forfeiture and penalty. False representations to an agency of the United States on any matter within its jurisdiction, knowing it to be false, is a violation of 18 U.S.C. 1001 which provides for a fine or imprisonment or both.

EXHIBIT A

GRADE REQUIREMENTS

A. *Defects.* Defects are: (1) Off-color; (2) inferior meat condition; (3) end cracks; (4) fermentation; (5) skin or flesh damage; (6) scab; (7) burned; (8) mold; (9) imbedded dirt; (10) insect infestation; (11) decay.

B. *Explanation of terms.* (1) "Off-color" means a dull color or skin differing noticeably in appearance from that which is characteristic of mature, properly handled fruit of a given variety or type.

(2) "Inferior meat condition" means flesh which is fibrous, woody, or otherwise inferior due to immaturity to the extent that the characteristic texture of the meat is substantially affected.

(3) "End cracks" means callous growth cracks, at the blossom end of prunes, aggregating more than three-eighths of one inch (⅜") but not more than one-half of one inch (½") in length.

(4) "Fermentation" means damage to the flesh by fermentation to the extent that the characteristic appearance or flavor is substantially affected.

(5) "Skin or flesh damage" means growth cracks, splits, breaks in skin or flesh of the following descriptions:

(a) Callous growth cracks, except end cracks as defined in this section, aggregating more than three-eighths of one inch (⅜") in length;

(b) Splits or skin breaks exposing flesh and materially affecting the normal appearance of the prunes;

(c) Any cracks, splits, or breaks open to the pit;

(d) Healed or unhealed surface or flesh blemishes caused by insect injury and which materially affect appearance, edibility or keeping quality.

(6) "Scab" means tough or thick scab exceeding in the aggregate the area of a circle three-eighths of one inch (⅜") in diameter or by unsightly scab of another character exceeding in the aggregate the area of a circle three-fourths of one inch (¾") in diameter.

(7) "Burned" means injury by sunburn or excessive heat in dehydration to the extent that the characteristic appearance, flavor or edibility of the fruit is noticeably affected.

(8) "Mold" means a characteristic fungus growth and is self-explanatory.

(9) "Imbedded dirt" means the presence of dirt or other extraneous material so imbedded in, or adhering to, the prune that it cannot readily be removed in washing the fruit.

(10) "Insect infestation" means the presence of insects, insect fragments or insect remains.

C. *Maximum tolerances.* Tolerance allowances shall be on a weight basis and shall not exceed the following:

(1) There shall be no tolerance allowance for live insect infestation.

(2) The tolerance allowances for decay shall not exceed one percent (1%).

(3) The combined tolerance allowance for mold, imbedded dirt, insect infestation, and decay shall not exceed five percent (5%).

(4) The combined tolerance allowance for fermentation, skin or flesh damage, scab, burned, mold, imbedded dirt, insect infestation, and decay shall not exceed eight percent (8%).

(5) The combined tolerance allowance for end cracks, fermentation, skin or flesh damage, scab, burned, mold, imbedded dirt,

insect infestation, and decay shall not exceed ten percent (10%), except that the first eight percent (8%) of end cracks shall be given one-half value and any additional percentage of end cracks shall be given full value.

(6) The combined tolerance allowance for off-color, inferior meat condition, end cracks, fermentation, skin or flesh damage, scab, burned, mold, imbedded dirt, insect infestation, and decay shall not exceed fifteen percent (15%), except that the first eight percent (8%) of end cracks shall be given one-half value and any additional percentage of end cracks shall be given full value.

[36 FR 18782, Sept. 22, 1971, as amended at 47 FR 47230, Oct. 25, 1982]

§ 999.300 Regulation governing importation of raisins.

(a) *Definitions.* For purposes of this section:

(1) "Raisins" means grapes from which a part of the natural moisture has been removed.

(2) "Varietal type" means the applicable one of the following: Thompson Seedless raisins, Muscat raisins, Layer Muscat raisins, Currant raisins, Monukka raisins, and Golden Seedless raisins.

(3) "Thompson Seedless Raisins" includes those raisins commonly referred to in international trade as Sultana raisins and means raisins made from Thompson Seedless (Sultana) grapes and from grapes with characteristics similar to Thompson Seedless (Sultanina) grapes.

(4) "Person" means any individual, partnership, corporation, association, or other business unit.

(5) "Fruit and Vegetable Quality Division" means the Fruit and Vegetable Quality Division of the Food Safety and Quality Service, U.S. Department of Agriculture, Washington, D.C. 20250.

(6) "USDA inspector" means an inspector of the Processed Products Branch, Fruit and Vegetable Quality Division, or any other duly authorized employee of the U.S. Department of Agriculture.

(7) "Importation of raisins" means the release of raisins from custody of the U.S. Customs Service.

(8) "Fruit and Vegetable Division" means the Fruit and Vegetable Division of the Agricultural Marketing Service, U.S. Department of Agriculture, Washington, D.C. 20250.

(b) *Grade and size requirements.* The importation of raisins into the United States is prohibited unless the raisins are inspected and certified as provided in this section. Except as provided in paragraph (e)(2) of this section, no person may import raisins into the United States unless such raisins have been inspected and certified by a USDA inspector as to whether or not the raisins are of a varietal type, and if a varietal type, as at least meeting the following applicable grade and size requirements, which requirements are the same as those imposed upon domestic raisins handled pursuant to Order No. 989, as amended (Part 989 of this chapter):

(1) With respect to Thompson Seedless raisins—the requirements of U.S. Grade C as defined in the effective United States Standards of Grades of Processed Raisins (§§ 52.1841—52.1858 of this title): *Provided,* That at least 70 percent, by weight, of the raisins shall be well-matured or reasonably well-matured. With respect to select-sized and mixed-sized raisin lots, the raisins shall at least meet the U.S. Grade B tolerances for pieces of stem, and undeveloped and substandard raisins, and small (midget) sized raisins shall meet the U.S. Grade C tolerances for those factors;

(2) With respect to Muscat raisins—the requirements of U.S. Grade C as defined in said standards;

(3) With respect to Layer Muscat raisins—the requirements of U.S. Grade B as defined for "Layer or Cluster Raisins with Seeds" in said standards, except for the provisions therein relating to moisture content;

(4) With respect to Currant raisins—the requirements of U.S. Grade B as defined in said standards;

(5) With respect to Monukka raisins—the requirements for Thompson Seedless Raisins prescribed in paragraph (b)(1) of this section, except that the tolerance for moisture shall be 19 percent rather than 18 percent;

(6) With respect to Golden Seedless raisins—the requirements prescribed in paragraph (b)(1) of this section for Thompson Seedless raisins and the

color requirements for "colored" as defined in said standards.

(c) *Inspection and certification requirements.* (1) All inspections and certifications required by paragraph (b) of this section shall be made by USDA inspectors in accordance with the regulations governing inspection and certification of processed fruits and vegetables, processed products thereof, and certain other processed food products (Part 52 of this title). The cost of each such inspection and certification shall be borne by the applicant.

(2) Each lot of raisins inspected in accordance with paragraph (c)(1) of this section shall be covered by an inspection certificate. Each such certificate shall set forth, among other things, the following:

(i) The date and place of inspection;

(ii) The name of the applicant;

(iii) The name of the importer;

(iv) The quantity and identifying marks of the lot inspected;

(v) The statement, as applicable, "Meets U.S. import requirements under section 8e of the AMA Act of 1937" or "Fails to meet U.S. import requirements under section 8e of the AMA Act of 1937"; and

(vi) If the lot fails to meet the import requirements, a statement of the reasons therefor.

(3) Whenever raisins are offered for inspection, the applicant shall furnish any labor and pay any costs incurred in moving and opening containers as may be necessary for proper sampling and inspection. The applicant shall also furnish the USDA inspector the entry number and such other identifying information for each lot as he may request. "To avoid delay in scheduling the inspection the applicant should make advance arrangements with the USDA inspection office."

(d) *Reconditioning.* Nothing contained in this section shall preclude the reconditioning of failing lots of raisins prior to importation of raisins in order that such raisins may be made eligible to meet the applicable grade and size requirements in paragraph (b) of this section.

(e) *Exemptions.* (1) Notwithstanding any other provision of this section, any lot of raisins which in the aggregate does not exceed 100 pounds, net weight, may be imported without regard to the restrictions of this section.

(2) Any person may import any lot of raisins which does not meet the applicable grade and size requirements of paragraph (b) of this section for use in the production of alcohol, syrup for industrial use, or which does not meet such requirements with respect to mechanical damage or sugaring for use in the production of raisin paste. Prior to such importation, such person shall file with the Customs Service Regional Commissioner or District Director, as applicable, at the port at which the customs entry is filed an executed "Raisins—Section 8e Entry Declaration" prescribed in paragraph (e)(2)(i) of this section as "Raisin Form No. 1". Promptly after such filing, such person shall transmit a copy of this form to the Fruit and Vegetable Division. No person may import, sell, or use any raisins which do not meet the applicable grade and size requirements of paragraph (b) of this section other than for use as set forth in this paragraph. Each person importing raisins, which do not meet the applicable grade and size requirements of paragraph (b) of this section, for use in the production of alcohol, syrup for industrial use, or raisin paste shall obtain from each purchaser, not later than the time of delivery to such purchaser, and file with the Fruit and Vegetable Division not later than the fifth day of the month following the month in which the raisins were delivered, an executed "Raisins—Section 8e Certification of Processor or Reseller," prescribed in paragraph (e)(2)(ii) of this section as "Raisin Form No. 2." One copy of this executed form shall be retained by the importer and one copy shall be retained by the purchaser. Each reseller of raisins imported pursuant to this subparagraph should, for his protection, obtain from each purchaser and hold in his files an executed Raisin Form No. 2, covering such sales of such raisins during the calendar year. One copy of this executed form shall be retained by the reseller and one copy shall be retained by the purchaser.

(i) *Raisin Form No. 1.* The following is prescribed as Raisin Form No. 1.

RAISIN FORM NO. 1

RAISIN—SECTION 8e ENTRY DECLARATION

I certify to the U.S. Department of Agriculture and the Bureau of Customs that none of the raisins being imported and which are identified below will be used other than in the production of alcohol, syrup for industrial use, or raisin paste.

1. Name of vessel: ———
2. Country of origin or raisins: ———
3. Date of arrival: ———
4. City of arrival: ———
5. Unloading pier: ———
6. USDA Certificate of Quality and Condition Number: ———
7. Raisins entered:

Lot or chop mark	Number of containers	Total net weight (pounds)

I agree to obtain from each person to whom any of the raisins listed above are delivered, an executed Raisin Form No. 2 "Raisins—Section 8e Certification of Processor or Reseller" and to file the same with the Fruit and Vegetable Division, Agricultural Marketing Service, U.S. Department of Agriculture, Washington, D.C. 20250, not later than the fifth day of the month following the month in which the raisins were delivered.

Dated: ———
Name of firm: ———
Address: ———
Signature: ———
Title: ———

(ii) *Raisin Form No. 2.* The following is prescribed as Raisin Form No. 2.

RAISIN FORM NO. 2

RAISINS—SECTION 8e CERTIFICATION OF PROCESSOR OR RESELLER

I hereby certify to the U.S. Department of Agriculture that I have acquired the raisins covered by this certification; that I will use or sell them for use only in production of alcohol, syrup for industrial use, or raisin paste, as permitted by the Regulation Governing the Importation of Raisins (7 CFR 999.300; 37 FR 5282; 13634) and I am (check one or more if applicable):

——Producer of alcohol. ——Producer of syrup for industrial use. ——Producer of raisin paste. ——Reseller.

1. Date of purchase: ———
2. Place of purchase: ———
3. Name and address of importer or seller: —
4. USDA Certificate of Quality and Condition Number: ———
5. Raisins acquired:

Number of containers	Total net weight (lbs.)

Dated: ———
Name of firm: ———
Address: ———
Signature: ———
Title: ———

(f) *Books and records.* Each person subject to this section shall maintain true and complete records of his transactions with respect to imported raisins. Such records shall be retained for not less than 2 years subsequent to the calendar year of importation. The Secretary, through his duly authorized representatives, shall have access to any such person's premises during regular business hours and shall be permitted at any such time to inspect such records and any imported raisins held by such person.

(g) *Other restriction.* The provisions of this section do not supersede any restrictions or prohibitions on the importation of raisins under the Federal Plant Quarantine Act of 1912, the Federal Food, Drug and Cosmetic Act, or any other applicable laws or regulations, or the need to comply with applicable food and sanitary regulations of city, county, State, or Federal agencies.

(h) *Compliance.* Any person violating any of the provisions of this regulation is subject to a forfeiture in the amount prescribed in section 8a(5) of the Agricultural Marketing Agreement Act of 1937, as amended (secs. 1-19, 48 Stat. 31, as amended; 7 U.S.C. 601-674), or, upon conviction, a penalty in the amount prescribed in section 8c(14) of said act, or to both such forfeiture and penalty. False representation to an agency of the United States in any matter within its jurisdiction, knowing it to be false, is a violation of 18 U.S.C. 1001 which provides for a fine or imprisonment or both.

[37 FR 5282, Mar. 14, 1972, as amended at 37 FR 13635, July 12, 1972; 37 FR 23820, Nov. 9, 1972; 41 FR 52646, Dec. 1, 1976; 43 FR 47972, Oct. 18, 1978; 43 FR 57863, Dec. 11, 1978; 45 FR 65513, Oct. 3, 1980; 47 FR 51731, Nov. 17, 1982; 50 FR 45808, Nov. 4, 1985]

§ 999.400 Regulation governing the importation of filberts.

(a) *Definitions.* (1) "Filberts" means filberts or hazelnuts.

(2) "Inshell filberts" means filberts, the kernels or edible portions of which are contained in the shell.

(3) "Shelled filberts" means the kernels of filberts after the shells are removed.

(4) "Person" means any individual, partnership, corporation, association, or other business unit.

(5) "USDA inspector" means a Federal or Federal-State inspector, Food Safety and Quality Service, United States Department of Agriculture, or any other duly authorized employee of the USDA.

(6) "Importation" means release from custody of the United States Bureau of Customs.

(b) *Grade and size requirements.* Except as provided in paragraph (d) of this section, no person shall import into the United States any lot of filberts unless the filberts meet the following requirements, which are identical to those for filberts grown in Oregon and Washington and handled pursuant to Order No. 982, as amended (7 CFR Part 982):

(1) *Inshell filberts.* All inshell filberts shall be of a quality equal to or better than the requirements of U.S. No. 1 grade and medium size as defined in the U.S. Standards for Filberts in the Shell (7 CFR Part 51), except that the tolerance for insect injury shall be two percent. With this modification, the U.S. No. 1 grade, medium size is identical to the Oregon No. 1 grade, medium size (as defined in the Oregon Grade Standards Filberts in Shell) and prescribed for inshell filberts under Order No. 982, as amended.

(2) *Shelled filberts.* All shelled filberts shall be of a quality equal to or better than the requirements prescribed in Exhibit A of this section.

(c) *Inspection and certification requirements*—(1) *General.* Compliance with the grade and size requirements of paragraph (b) of this section shall be determined on the basis of an inspection and certification by a USDA inspector.

(2) *Inspection.* Inspection shall be performed by USDA inspectors in accordance with the Regulations Governing the Inspection and Certification of Fresh Fruits and Vegetables and Related Products (7 CFR Part 51). The cost of each such inspection and related certification shall be borne by the applicant. Whenever filberts are offered for inspection, the applicant shall furnish any labor and pay any costs incurred in moving and opening containers as may be necessary for proper sampling and inspection. The applicant shall also furnish the USDA inspector the entry number and such other identifying information for each lot as he may request. Inspection must be completed prior to the importation of filberts. The applicant should make advance arrangements with the USDA inspection office to avoid delay in scheduling the inspection.

(3) *Certification.* Each lot of filberts inspected in accordance with paragraph (c)(1) of this section shall be covered by an inspection certificate. Each such certificate shall set forth, among other things, the following:

(i) The date and place of inspection.

(ii) The name of the applicant.

(iii) The name of the importer.

(iv) The quantity, and identifying marks of the lot inspected.

(v) The statement, if applicable: "Meets U.S. import requirements under section 8e of the AMA Act of 1937".

(vi) If the lot fails to meet the import requirements, a statement to that effect and the reasons therefor.

(d) *Exemptions.* Notwithstanding any other provisions of this section, the importation of any lot of filberts which does not exceed 115 pounds in net weight shall be exempt from the requirements of this section.

(e) *Reconditioning prior to importation.* Nothing contained in this section shall be deemed to preclude reconditioning filberts prior to importation, in order that such filberts may be made eligible to meet the applicable grade

and size regulations prescribed in paragraph (b) of this section.

(f) *Other restrictions.* The provisions of this section do not supersede the Federal Plant Quarantine Act of 1912, the Federal Food, Drug, and Cosmetic Act, or any other applicable laws or regulations or the need to comply with applicable food and sanitary regulations of city, county, State or Federal agencies.

(g) *Compliance.* Any person who violates any provision of this section shall be subject to a forfeiture in the amount prescribed in section 8a(5) of the Agricultural Marketing Agreement Act of 1937, as amended (secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674), or, upon conviction, a penalty in the amount prescribed in section 8c(14) of said act, or to both such forfeiture and penalty. False representations to any agency of the United States on any matter within its jurisdiction, knowing it to be false, is a violation of 18 U.S.C. 1001 which provides for a fine or imprisonment or both.

EXHIBIT A

GRADE REQUIREMENTS FOR SHELLED FILBERTS

Filbert kernels or portions of filbert kernels shall meet the following requirements:

(1) Well dried and clean;

(2) Free from foreign material, mold, rancidity, decay or insect injury; and

(3) Free from serious damage caused by serious shriveling, or other means.

TOLERANCES

In order to allow for variations incident to proper grading and handling the following tolerances, by weight, are permitted as specified:

(1) For Foreign Material: 0.02 of one percent, for foreign material.

(2) For Defects: Five percent for kernels or portions of kernels which are below the requirements of this grade, including not more than the following: Two percent for mold, rancidity, decay or insect injury: *Provided,* That not more than one percent shall be for mold, rancidity, or insect injury.

DEFINITIONS

(1) "Well dried" means that the kernels are firm and crisp, not containing more than 6 percent moisture.

(2) "Clean" means practically free from plainly visible adhering dirt or other foreign material.

(3) "Foreign material" means any substance other than the filbert kernels, or portions of kernels. (Loose skins, pellicles or corky tissue which have become separated from the kernels shall not be considered as foreign material, provided that this material does not exceed .02 of one percent by weight.)

(4) "Serious damage" means any specific defect described in this section, or any equally objectionable variation of any one of these defects, or any other defects, or any combination of defects, which seriously detracts from the appearance or the edible or marketing quality of the individual portion of the kernel or of the lot as a whole. The following defects shall be considered as serious damage.

(i) "Serious shriveling" means when the kernel is seriously shrunken, wrinkled and tough.

(ii) "Mold" means that there is a visible growth of mold either on the outside or inside of the kernel.

(iii) "Rancidity" means that the kernel is noticeably rancid to the taste. An oily appearance of the flesh does not necessarily indicate a rancid condition.

(iv) "Decay" means that any portion of the kernel is decomposed.

(v) "Insect injury" means that the insect, frass or web is present, or the kernel or portion of kernel show definite evidence of insect feeding.

[42 FR 64899, Dec. 29, 1977, as amended at 45 FR 63482, Sept. 25, 1980; 47 FR 12612, Mar. 24, 1982; 48 FR 34015, July 27, 1983]

FINDING AIDS

A list of CFR titles, subtitles, chapters, subchapters and parts and an alphabetical list of agencies publishing in the CFR are included in the CFR Index and Finding Aids volume to the Code of Federal Regulations which is published separately and revised annually.

Material Approved for Incorporation by Reference
Table of CFR Titles and Chapters
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List of CFR Sections Affected

Material Approved for Incorporation by Reference

The Director of the Federal Register has approved under 5 U.S.C. 552(a) and 1 CFR Part 51 the incorporation by reference of the following publications. For more information on incorporation by reference, see the preliminary pages of this volume.

7 CFR CHAPTER IX (PARTS 900–999)
AGRICULTURAL MARKETING SERVICE, DEPARTMENT OF AGRICULTURE

	7 CFR
Federal-State Inspection Service	
Hawaii Department of Agriculture, Division of Marketing and Consumer Services, P.O. Box 22159, Honolulu, HI 96822	
Standards of Hawaii grown Papaya, Title 4, subtitle 4, chapter 41, subchapter 7 (May 29, 1981).	928.313
Oregon Department of Agriculture, Agriculture Bldg., Salem, OR 97310.	
Oregon Grade Standards Filberts in Shell (Aug. 25, 1975, Ed.)	982.45; 982.51; 982.453
Oregon Grade Standards for Filberts (Hazelnut) Kernels (July 20, 1976, Ed.).	982.50; 982.101
Washington State Department of Agriculture, 406 General Administration Building, Olympia, Washington 98504	
Washington Administrative Code Chapter 16–436, Standard for Peaches (effective Octover 18, 1971).	921.318

Table of CFR Titles and Chapters

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I Administrative Committee of the Federal Register (Parts 1-49)

II Office of the Federal Register (Parts 50-299)

III Administrative Conference of the United States (Parts 300-399)

IV Miscellaneous Agencies (Parts 400-499)

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905.556 (b)(3) amended 11345
(b) (1) and (3) revised 20062, 21467
905.557 (b)(1) revised 12647
905.558 (b)(1) revised 12647
905.559 (b) (7) and (8), and (c) revised 2792
(b)(13) revised 11346
(b) (5), (7), (8), (15), and (17) amended; (c) revised 12647
(b)(11) revised 20062, 21467
(b)(13) revised 21467
(b)(9) revised 24174, 25799
905.560 Added 42318
Introductory texts of (a) and (b) revised 49786
905.561 Added 42319
Introductory texts of (a) and (b) revised 49786
(a)(2) revised 51619, 54767, 57641
905.562 Added 42319
Introductory texts of (a) and (b) revised 49786
905.563 Added 42317
Introductory texts of (a) and (b) revised 49786
906.120 (b) corrected 3286
906.215 Added 48340
906.340 (a)(1) revised 48494
(a)(1) (i) and (ii) corrected 51177
906.356 Added 51178
906.357 Added 51179
907.212 Added 3285
907.659 Added 59444
908.214 Added 16321
908.787 Added 8772
908.788 (a) revised 21024
908.791 (a) revised 21930
909.214 Added 54236
909.340 Removed 20611
909.341 Added 48495
(a)(1) introductory text revised 53546
910.120 Added 55308
910.213 Added 44120
910.310 Added 42320
910.311 Added 44121
910.319 Added 59589
911.22 (b) revised 52604
911.41 (b) revised 52604
911.45 Revised 52604
911.48 (a) (3), (4), and (5) redesignated as (a) (4), (5), and (6); new (a)(3) added 52604

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911.57 Revised 52604
911.155 Added 49786
911.214 Added 25665
911.336 (a)(3) revised 2793
911.337 Revised 24995
912.215 Added 57641
913.211 Added 58650
915.22 (b) revised 52605
(b)(1) corrected 59719
915.41 (b) revised 52605
915.45 Revised 52605
915.49 Added 52605
915.51 (a) (3), (4), and (5) redesignated as (a) (4), (5), and (6); new (a)(3) added 52606
915.155 Added 50024
915.214 Added 25800
915.305 (a)(1) (viii), (ix), and (x) revised 32306
915.316 (a)(2) amended 2677
915.317 Added 24007
(a)(2) table amended 26502, 28048, 29069, 29812, 30794, 32823, 33963, 36299, 38145, 41994, 44306, 47103, 49787, 54768
(a)(8) removed; (a)(9) through (12) redesignated as (a) (8) through (11) 47103
916.213 (a) revised 1500
916.214 Added 31592
916.341 (a) and (b) revised 20064
916.348 Added 21694
(a)(1) and introductory texts of (a) (2), (3), (4), (5), and (6) revised 28463
916.349 Added 26502
917.121 Added 4012
917.212 (a) revised 4117
917.213 Added 33196
917.419 (a)(4) revised and (a)(5) added 20065
917.436 Added 19634
(b) introductory text amended 25436
917.437 Added 21695
(a) introductory text and (b) revised; (c) added 27930
917.438 Added 22535
(a) and introductory texts of (b) and (c) revised 28602
917.439 Added 32111
918.213 Added 25436
918.317 Added 19828
919.214 Revised 41994

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919.316 Added 31593
921.214 Revised 32730
921.312 Added 30622
922.215 Added 32730
922.315 Added 30271
923.215 Added 33028
923.314 Added 27463
924.215 Added 37028
(b) revised 45418
924.313 Added 30929
926.214 (a) revised 8064
926.215 Added 43480
926.312 Revised 33964
(a) amended 43715
927.105 Revised 42851
927.122 (a) amended 42851
927.125 (b) (3) and (4) removed; (b) (5) and (6) redesignated as (b) (3) and (4) 42852
927.215 Added 46091
927.314 Added 36300
928.204 Added 4276
928.306 Added 59720
929.148 Added 51621
929.216 Added 53994
930.104 (c) and (d) revised 27931
930.158 Revised 27931
930.205 Added 31739
930.502 Added 28602
Revised 45419
931.310 (b) introductory text revised 43481
932.109 (a) introductory text revised 38146
932.153a Added 41994
932.210 Revised 54236
(a) revised 59318
944.15 Added 24008
(a)(2) revised 29812, 30794
(a)(4) revised 32824, 36300
944.111 (a) (1) and (2) revised; (a)(3) added 11346
(a) (1), (2), and (3) revised 14891, 20065
(a) (1) and (2) revised 21468
944.112 Added 42529
(a) introductory text, (1) and (2) revised 49788
944.204 (a)(3) revised 2793
945.228 Added 42530
945.334 Added ..... [1]30272
946.103 Added 12988
946.104 Revised 12988
946.228 Added 42530
946.330 Added ..... [1]32111
(c) revised ..... [1]52995

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947.228 Added 36301
947.333 Removed ..... [1]32731
947.334 Added 32731
948.273 Added 34114
948.274 Added 34114
948.373 Added ..... [1]33965
948.374 Added ..... [1]45795
951 Removed 26672
953.212 Added 24354
953.315 Added ..... [1]23720
958.219 Revised 33649
958.320 Added ..... [1]32207
959.110 Added 16212
959.111 Added 16212
959.215 Added ..... [1]3406
959.216 Added 57209
966.212 Added 47754
966.312 (a)(3)(iii) added ..... [1]10953
966.313 Added ..... [1]48686
966.314 Added ..... [1]54237
967.211 Added 29534
967.311 Added ..... [1]33197
971.214 Added ..... [1]1028
971.215 Added 52836
971.316 Added ..... [1]53225
Introductory text amended ..... [1]59589
980.113 Revised ..... [1]8064
980.114 Added 32308
980.209 Added ..... [1]48687
Corrected ..... [1]50024
980.210 Added 54238
981.71 Suspended 4416
981.72 Suspended in part 4416
981.225 Added 43715
981.324 Removed 43018
981.325 Added 43018
981.441 (d) (5) and (7) suspended 6475
(b), (c), (f)(3) and (g) revised; (d) (5), (6) and (7) removed 25437
981.450 Revised 25438
981.467 (b) revised 25438
981.471 Removed 4416
981.472 (b) revised 25438
981.473 (a), (b), (c), (e) and (f) amended 25438
981.482 Removed 3006
982.16 Revised 53226
982.17 Revised 53226
982.40 Revised 53226
982.41 Revised 53226
982.46 Revised 53227
982.50 Revised 53227
982.51 Revised 53227
982.52 Revised 53227

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982.54 Revised	53228
982.65 Revised	53228
982.71 Revised	53228
982.80 (b)(3) revised	53228
Correctly designated as 982.86	55829
982.86 (b)(3) revised	53228, 55829
982.224 Revised	8167 [1]
982.225 Added	59720
982.319 (b) revised	8773 [1]
982.320 Added	50025
984.222 Added	57351
984.327 Added	51995
984.437 Revised	12482
984.445 Added	22267
984.450 Revised	22267, 55309
984.451 Revised	22267
984.454 Removed	22267
984.456 Revised	22267
984.458 Added	22267
984.460 Removed	22267
984.461 Removed	22267
984.462 Revised	22267
984.464 (b) amended	22267
984.471 Revised	22267
984.472 Revised	22267
984.473 Revised	22267
984.474 Revised	22267
984.476 Revised	22268
984.480 Revised	22268
987.223 Added	59721
987.320 Added	54421
989.110 Revised	31739
Corrected	40141
989.201—989.230 (Subpart) Heading revised	31740
989.211 Added	31740
989.212 Added	31740
989.221 Revised	46300
989.224 Added	46300
Revised	53229
989.230 Revised	4417 [2]
989.231 Added	53229
989.326 Added	53994
989.401 (a)(1) and (b) revised	4277
(c) revised	31740
989.601 Revised	54768
991.213 Added	14738
991.310 Revised	44121
993.150 (g)(3) revised	52838
993.210 (Subpart) Amended	4013
Redesignated as 993.211 and revised	42531
993.211 (Subpart) Added; redesignated from 993.210 and revised	42531

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993.325 Revised	22824
993.326 Revised	50701
993.400 Added	42531
993.402 Added	42531
999.100 (a)(6), (c)(4) and (d) revised; (b)(1) amended	29263

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905.126 (b) and (d) revised	7754
Technical correction	8765
905.215 Added	53650
905.560 (a)(7) and (8), (b)(7) and (8), and (c) revised	3282
(a)(8) and (b)(8) revised	12215
(a)(7) and (b)(7) revised	15829
(a)(5) and (b)(5) revised	18673
(a)(9) and (b)(9) revised	24576
905.561 (a)(2) revised	6262
905.563 (a)(4) revised	15829
(a)(3) and (b)(3) revised	18673
(a)(3) and (4) and (b)(3) revised	19965
(a)(1) and (3), and (b)(1) and (3) revised	23185
(a)(2) revised	24576
(a)(1) through (4) and (b)(1) and (3) revised	34248
905.564 Added	42178
Revised	49474
(a)(1), (b)(1), and (c) revised	53008
(d) added; temporary	54917
905.565 Added	42179
Revised	49475
(d) added; temporary	54917
905.566 Added	42179
Revised	49801
(a)(2) revised	51797, 53650
(d) added; temporary	54917
905.567 Added	42179
Revised	49475
(d) added; temporary	54917
906.216 Added	48510
906.358 Added	48719
906.359 Added	48720
907.100 (e) revised; (h) added	47021
907.102 (a) amended	47021
907.108 (a) revised	47021
907.110 (c), (d), (e), and (f)(2) revised	47021
907.112 Amended	47022
907.113 (a) and (c) revised	47022

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907.117 (c) revised 47022
907.130 Revised 47022
907.132 Revised 47022
907.133 Heading, (a) and (c) revised 47023
907.141 Amended 47023
907.213 Added 4886
907.385 Added 49825
907.665 Added 5288
907.685 Added 56771
907.689 Added 52886
(b)(1)(i) and (iii) revised 54162
907.690 Added 53805
907.691 Added 54918
907.692 Added 54918
(b)(1)(i), (ii), and (iii) revised 56625
907.693 Added 55845
907.694 Added 56772
908.215 Added 14859
908.824 Added 10439
908.828 Added 14860
(a) and (b) revised 20545
908.852 Added 48510
909.214 (b) revised 35843
909.342 Added 52887
910.153 (e)(5)(iv) added 10440
(a)(6) and (e)(2)(ii) amended; (g) and (h) added 39736
910.214 Added 38155
910.357 Added 41918
910.365 Added 48720
910.368 (b)(1) revised 53464
910.369 Added 53008
910.370 Added 53973
910.371 Added 55172
910.372 Added 55845
910.373 Added 56772
911.150 Added 42180
911.215 Added 24698
911.329 (a)(3)(i) through (iii) revised 15685
(a)(2) revised 19299, 30343, 36014, 45570
911.337 (a)(3) revised 7384, 16547
911.338 Added 16548
Revised 23929
(a)(3) revised 54751
912.216 Added 56625
913.212 Added 52433
914 Removed 30094
915.150 (d) added 42180
915.215 Added 24977
915.317 (a)(2) table amended 3283
915.318 Added 21337

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(a)(2) table amended; (a)(6) existing text designated as (6)(ii); (6)(i) added 34974
(a)(2) table amended 43155, 44861
916.110 Heading and (b) revised 22071
916.214 (a) revised 1043
916.215 Added 32410
916.348 (a)(2)(i) and (4)(i) revised 18805
916.349 Revised 20546
(a) introductory text revised 28784
916.350 Added 24669
(b) introductory text revised 31179
917.1—917.69 (Subpart) Revised 17528
917.141 Removed 22071
917.143 Heading and (b) revised 22071
(b) revised 28509
917.149 Added 31180
917.214 Added 32411
917.215 Added 32411
917.216 Added 32410
917.419 (a) introductory text and (a)(1), (3) and (5) revised; (a)(6) and (7) added 24577
917.436 Removed 23185
917.437 Removed 20548
917.439 Revised 28287
Correctly designated 46290
(b) introductory text revised 30027, 34762
917.440 Added 20547
(a) introductory text revised; (b) revised 27376
917.441 Added 21174
(a), (b) introductory text and (c) introductory text revised 30013
917.442 Added 23185
(b) introductory text revised 31180
918.214 Added 19201
918.318 Added 15830
Revised 19201
919.111 Added 43710
919.215 Added 35695
921.215 Added 31805
921.313 Added 29808
922.216 Added 31805
922.316 Added 28785
923.216 Added 30585
923.315 Added 26851
924.216 Added 31375
924.314 Added 30586
926.216 Added 38495

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926.313 Added 34007
Revised 42181
927.216 Added 43389
927.315 Added 31181
(a) and (c) revised 38495
928.152 (a)(3) revised; (a)(4) added 43909
928.205 Added 5383
929.217 Added 47457
930.101 Revised 21762
930.106 Revised 21762
930.206 Added 36643
930.502 Revised 14178
931.211 Added 44357
931.311 Added 30094
(a)(1) and (b) revised 36795
Revised 39004
932.153 Revised and redesignated from 932.153a 38757
932.153a Revised and redesignated at 932.153 38757
932.156 Added 45997
932.210 (a) revised 22551
932.211 Added 42181
944.16 Added 21174
944.112 (a)(1) and (2) revised; (a)(3) added 15829
(a) amended 18674
(a)(1), (2), and (3) revised 19965
(a)(1) and (2) revised 23186, 24578
(a) revised 34763
944.113 Added 42182
(a) introductory text, (1) and (2) revised 49110
944.204 (a)(3) revised 7384, 16548, 54751
945.229 Added 53009
945.334 Removed [1] 29133
945.335 Added 29131
946.229 Added 36014
946.331 Added 31806
947.229 Added 32230
947.334 Removed 32696
947.335 Added 32696
(f)(1) revised; (f) (2) and (3) redesignated as (f) (3) and (4); new (f)(2) added 52058
948.275 Added 30095
948.276 Added 31541
948.375 Added 31808
948.376 Added 42183
953.122 Revised 42184
953.213 Added 22072
953.316[1] Added 21763
958.5 Revised 21935, 36196

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958.25 (e) and (h) revised 29135, 36196
958.26 Revised 29135, 36196
958.41 Amended 19135, 36196
958.46 Added 29135
Revised 36196
958.47 Added 29135, 36196
958.89 Added 29135
958.90 Added 29135
958.91 Added 29136
958.220 Added 30096
958.321 Added 30013
(c) (7) and (8) added; (d) introductory text revised 45997
Introductory text revised; (a)(2) redesignated as (a)(3); new (a)(2) added 51797
959.31 Added[1] 4253
Introductory text amended 13930
(f)(3) amended 16815
966.213 Added 50629
966.315 Added 43910
Revised 50265
967.212 Added 31541
967.312 Added 35521
971.216 Added 49625
971.316[1] Introductory text revised 10441
971.217 Added 51388
980.114[1] Revised 6750
980.115 Added 30014
Introductory text revised; (a)(2) redesignated as (a)(3); new (a)(2) added; (h) amended 51798
980.211 Added 43911
Revised 50266
981.1—981.92 Nomenclature change 26853
981.4 Revised 26852
981.7 Revised 26852
981.8 Revised 26852
981.13 Revised 26852
981.20 Revised 26852
981.21 Revised 26852
981.22 Heading and text revised 26853
981.30—981.40 Undesignated center heading revised 26853
981.42 Undesignated center heading and section added 26583
(a) revised 53651
981.47 Revised 26853
981.49 (a) amended 26583

[1] Not carried in the CFR.

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981.50	Revised	26853
981.51	Revised	26853
981.52	Revised	26853
981.53	Removed	26853
981.61	Revised	26853
981.62	(a) revised	26853
	(a) table corrected	27827
981.66	(c) and (d) amended	26854
981.81	(b) and (c) revised	26854
981.226	Added	43710
981.326	Added	37761
982.101	(Subpart) Added	43711
982.226	Added	54163
982.321	Added	49476
982.446	(c) and (d) added	34974
982.453	Amended	43711
984.4	Revised	31542
984.8	Revised	31542
984.13	Amended	31542
984.21	Amended	31542
984.26	Revised	31542
984.31	Revised	31542
984.32	Revised	31542
984.33	Revised	31542
984.35	Revised	31542
984.36	Amended	31542
984.37	(a), (c) and (d) amended; (g) removed	31542
984.38	Revised	31542
984.39	Amended	31543
984.40	(a) revised	31543
984.41	Amended	31543
984.42	Amended	31543
984.48	(a)(6) revised; (a)(7) and (8) redesignated as (a)(8) and (9); new (a)(7) added	31543
984.49	Revised	31543
984.50	(a), (b) and (e) revised	31543
984.51	(a), (b) and (c) revised	31543
984.54	Undesignated center heading and text revised	31543
984.56	Revised	31544
984.57	Removed	31544
984.58	Removed	31544
984.59	(b) revised	31544
984.64	Revised	31544
984.66	Revised	31544
984.67	(a) revised	31544
984.68	Revised	31544
984.69	(a) and (b) revised	31544
984.74	Removed	31544
984.75	Removed	31544
984.77	Revised	31544
984.84	Amended	31545
984.89	(b)(3) amended	31545
984.223	Added	52433

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984.328	Added	51798
984.437	Revised	54476
984.450	Revised	54476
984.451	Revised	54476
984.456	Revised	54476
984.458	Removed	54475
984.462	Removed	54475
984.464	Revised	54476
984.472	Revised	54476
984.474	Removed	54475
984.476	Removed	54475
987.321	Added	54164
989.18	Revised	32412
989.19	Revised	32412
989.21	Revised	32412
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989.25—989.26	Undesignated center heading revised	32412
989.26	Revised	32412
989.26a	Revised	32413
989.26b	Revised	32413
989.26c	Revised	32413
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989.29	Revised	32413
989.30	Revised	32414
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989.34	Revised	32414
989.35	Revised	32414
989.36	Revised	32414
989.37—989.39	Center heading removed	32414
989.37	Revised	32414
989.38	Added	32414
989.39	Revised	32415
989.39a—989.42	Removed	32415
989.42—989.43	Center heading added	32415
989.43	Revised	32415
989.43a	Added	32415
989.43b	Added	32415
989.43c	Added	32415
989.44	Revised	32415
989.45	Revised	32415
989.46	Revised	32416
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989.48	Revised	32416
989.49	Revised	32416
989.50	Revised	32416
989.51	Revised	32416
989.52	Revised	31416
989.54	Revised	32416
989.66	(g) amended	32417

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989.67 (a) revised; (c), (d)(1), (f), and (j) amended 32417
989.79 Amended 32417
989.85 Revised 32417
989.91 (c) amended 32417
989.95 Revised 32417
989.96 Heading revised; (h) amended 32417
989.202 Added 52646
989.231 Revised 11014
989.327 Added 53651
989.401 (a)(1) and (b) revised 8944
991.38 Revised 11476
991.138a Removed 11476
991.138b Removed 11476
991.138c Removed 11476
991.138d Redesignated as 991.139 11476
991.139 Redesignated from 991.138d 11476
991.140 Removed 11476
991.214 Added 16945
991.311 Added 41078
993.128 (a) revised 2372
993.212 Added 37306
993.327 Added 36644
993.403 Added 37306
999.100 (b)(1) and (d) revised 2075
999.300 (b)(1) amended; (b)(4) revised; (b)(5) added 52646

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900.16 Revised 10833
905.1 Revised 59368
905.4 (f) revised 59368
905.5 (i) through (k) revised; (l) and (m) added 59368
(k) corrected 61853
905.6 Revised 59368
905.10 Revised 59368
905.12 Resignated as 905.13 and revised; new 905.12 added 59368
905.13 Redesignated at 905.15; new 905.13 redesignated from 905.12 and revised 59368
905.14 Redesignated as 905.16; new 905.14 added 59369
905.15 Redesignated as 905.17; new 905.15 redesignated from 905.13 59368

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905.16 Redesignated at 905.18; new 905.16 redesignated from 905.14 59368
Amended 59370
905.17 Redesignated from 905.15 59368
905.18 Redesignated from 905.16 59378
905.19 Added 59369
905.20 Revised 59369
905.21 Revised 59369
905.22 Revised 59369
905.23 Revised 59369
905.24 Removed 59369
905.25 Removed 59369
905.26 Removed 59369
905.27 Amended 59370
905.28 Amended 59370
905.29 (a) and (b) amended 59370
905.30 Amended 59370
905.31 Heading and introductory text revised; (j) and (k) removed 59369
905.32 Removed 59369
905.33 Revised 59369
905.34 Revised 59369
905.35 Amended 59370
905.36 Amended 59370
905.40 Amended 59370
905.41 (a) amended; (b) revised 59370
905.42 (b) amended 59371
905.50 (a) and (c) revised; (b) and (d) amended 59371
905.51 Revised 59370
905.52 Headings (a) introductory text, (1) and (5), (b), and (c) revised 59370
905.53 (a) revised; (b) amended 59371
905.54 Removed 59370
905.70 Revised 59371
905.71 Amended 59371
905.80 Amended 59371
905.84 (a) amended; (b) and (d) revised 59371
905.88 Amended 59371
905.120 Revised 59371
905.125 Removed 59371
905.126 Removed 59371
905.130 Removed 59371
905.131 Removed 59371
905.132 Removed 59371
905.140 Revised 59372
905.141 Revised 59372
905.145 Revised 59372
905.301 Added 57947

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(a) table amended; (d) redesignated as (f); new (d) added	59956
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(a) table amended eff. 12-12-77 to 9-24-78); (d) revised eff. 12-5 to 12-11-77	62470
905.564 (a)(8) and (b)(8) revised	5072
(a) (1), (5) and (8) and (b) (1), (5), and (8) revised	8361
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905.565 (a)(2) revised	9663
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(a) (3) and (4), (b)(3), and (c) revised	14866
(a)(1) and (b)(1) revised; eff. 4-1 to 8-14-77	18271
(a)(3) and (b)(3) revised	21469
(a) (1) and (3) and (b)(1) and (3) revised	24716
(a) introductory text, (2) and (4) revised	40882
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905.566 (a)(2) revised	1023
(a)(2) revised	8361
(a)(1) and (b)(1) revised	10834
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905.567 (a)(2) revised	9663
(a)(1) and (b)(1) revised	10834
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905.568 Revised	47549
906.217 Added; eff. 8-1-77 to 7-31-78	59747
906.359 (a) introductory text and (2) revised	6363
906.360 Added	57300
907.102 (a)(1) amended	49437
907.110 (e) corrected	13803
907.112 Amended	49437
907.113 (a) corrected	44801
907.117 (e) amended	49437
907.131 (d)(3) amended	49437
907.141 Amended	49437
907.142 (b) amended	49437
907.214 Added	13012
907.685 Revised; eff. 1-28 to 2-24-77	6363
907.691 Added	3846
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907.719 Added	63379
907.722 Added; eff. 12-30-77 to 7-13-78	64360
908.100 (e) revised; (h) added	20473
908.102 (a) introductory text revised	20473
908.108 (a) revised	20473
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908.112 Amended	20474
908.113 (a) and (c) revised	20474
908.117 (c) revised	20474
908.130 Revised	20474
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908.133 Heading, (a), and (c) revised	20475
908.141 Amended	20475
908.216 Added	20811
908.853 Added	17127
908.854 Added	21101
909.215 Added	42842
909.216 Added; eff. 9-1-77 to 8-31-78	63636
910.180 (d)(3) added	10680
910.215 Added	54794
910.392 (b)(1) revised	26410
910.411 Added	48869
911.216 Added	34275
(a) revised; eff. 4-1-77 to 3-31-78	63636
911.339 Added	21786
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912.8 Revised	4811
912.24 (b) redesignated as (c); new (b) added	4812
912.25 Revised	4812
912.32 (b) revised	4812
912.41 (a) revised	4811
912.50 Revised	4811
912.124 Added	10299
915.216 Added	35143
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915.310 Added	27210
(a)(2) Table I amended	51606
(a)(2) table amended; (a)(7) revised	54556
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916.110 (b)(5) revised	23157
916.216 Added	34499
916.350 Revised	30491
916.351 Added	24229
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917.116 Revised	3625
917.122 Added	3625

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917.143 (b)(5) revised 22875
917.217 Added 37794
917.218 Added 37794
917.219 Added 35828
917.419 (a)(4)(ii), (5), and introductory text of (6) revised 23157
917.442 (b)(3) (i), (ii), and (4) revised; (b)(5) removed; (b) (6) through (8) redesignated as (b) (5) through (7) and revised 23157
917.443 Added 24230
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917.444 Added 26646
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917.445 Added 35973
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918.1 Revised 40884
918.10 Revised 40884
918.15 Revised 40884
918.16 Revised 40884
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918.18 Revised 40884
918.19 Revised 40885
918.21 Revised 40885
918.22 Revised 40885
918.25 Revised 40884
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918.27 Revised 40885
918.29 (h) amended; (q) removed; (r) redesignated as (q) 40885
918.32—918.38 Removed 40885
918.40 Revised 40885
918.41 Revised 40885
918.44 Revised 40885
918.81 Revised 40885
918.215 Added 29488
918.319 Added 21268
919.216 Added 45629
919.318 Added 38576
921.216 Added 36232
921.314 Added 36233
922.217 Added 35144
922.317 Added 30492
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923.217 Added 38576
923.315 (a) and (b) introductory texts revised 27568
923.316 Added 32761
924.217 Added 36990
924.315 Added 38577
926.217 Added; eff. 4-1-77 to 3-31-78 45325
926.314 Added 40679

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927.217 Added; eff. 7-1-77 to 6-30-78 59041
927.316 Added 39670
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928.152 (a) (3) and (4) revised 3
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928.206 Added 2665
928.307 Added 2
928.308 Added 65134
929.217 (a) revised 40679
929.218 Added 58733
929.304 Added 21787
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930.109 (c) revised 3626
930.207 Added 38577
930.591 Introductory text revised 3626
931.212 Added 57117
931.312 Added 38578
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932.153 Revised 44801
932.156 Revised 31762
932.212 Added 47550
944.17 Added 27214
944.101 Redesignated from 944.114 and (a) revised 57948
944.113 (a) (1) and (2) revised; (3) added 9664
(a) (1) through (4) revised 10835
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(a)(3) revised 21469
(a) (1) and (3) revised 24717
(a) revised 40886
944.114 Added 47550
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944.205 Added 21787
945.230 Added 43053
945.335 Superseded by 945.336 35145
945.336 Added 35145
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946.230 Added 42679
946.331 (a)(2)(iii) removed; (a)(3), (c), and (d) revised; (e)(5) added 7923
946.332 Added 38381
(e)(1)(ii) corrected 39671
947.335 Removed 41403
947.336 Removed 41403
948.277 Added 38579
948.278 Added 39360
948.377 Added 38382

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948.378 Added 51605
953.214 Added 25720
958.221 Added 39360
958.322 Added 37967
959.217 Added 2308
(b) revised 22126
959.317 Added 4396
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966.214 Added 54935
966.315 (a)(2)(i) revised 5073
996.316 Added 55191
(f) corrected 56487, 57445
967.15 Revised 32763
967.25 Revised 32763
967.26 Revised 32763
967.27 (f) added 32763
967.31 (m) added 32763
967.37 (a), (b) and (d) revised; (e) and (f) added 32763
967.38 (a), (e) and (f) revised 32764
967.44 Heading revised; text amended 32764
967.63 Added 32764
967.140—967.141 Undesignated center heading and sections added 46045
967.213 Added 45326
967.313 Added 39361
971.216 (b) revised 2666
971.217 Added 58399
971.317
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971.318 Added 59373
980.115 Revised 10300
980.116 Added 38384
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980.211 (a)(1) revised 5073
980.212 Added 55192
981.226 Revised 3847
981.227 Added 47184
981.300 Removed 19322
981.327 Added 47184
981.441 (b), (d), (e), and (g) revised 5342
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981.442 Added 3160
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(a)(4) and (6) revised 56488
981.450 Revised 19322
981.453 Removed 19322
981.455 Revised 19322
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981.472 (a) amended; (b) revised 19322
981.473 Revised 19322
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981.474 Revised 19322, 56488
981.481 Removed 19322
982.227 Added 60723
982.322 Added 58734
984.224 Added 60723
984.329 Added 57948
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987.322 Added 61591
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989.8 Amended 37201
989.10 Revised 37201
989.13 Amended 37201
989.22 Revised 37201
989.24 Heading and (b) revised; (c) and (d) added 37201
989.26 Amended 37201
989.26a Amended 37201
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989.59 (a) and (b) revised; (f) amended 37202
989.60 (b) note removed; (c) added 37202
989.61 Revised 37202
989.66 (b)(3) amended 37202
989.67 (d)(1), (f), and (j) amended 37202
989.79 Amended 37202
989.80 (a) and (c) amended 37202
989.82 Amended 37202
989.84 Amended 37202
989.96 Removed 37202
989.97 (Exhibit B) and note removed 37202
989.101 Removed 52375
989.103 Removed 52375
989.110 Removed 52375
989.122 Undesignated center heading revised; section added 52376
989.125 Removed 52376
989.126 Revised 52376
989.127 Removed 52376
989.128 Removed 52376
989.129 Amended 52376
989.138 Removed 52376
989.139 Revised 52376
989.140 Removed 52376

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989.142 Undesignated center heading revised; section added 52376
989.143 Added 52377
989.148 Removed 52377
989.152 Removed 52377
989.158 Undesignated center heading and (a)(8) revised 52377
989.159 (g) undesignated text designated as (g)(2); (g) (1) and (2) amended 52377
989.166 (c) (2) and (3) revised; (d) amended 52377
989.173 (a) and (d)(2) amended 52377
989.201 Removed 52377
989.203 Removed 52377
989.204 Removed 52377
989.210 Corrected 57684
989.211 Removed 52377
989.212 Removed 52377
989.221 Revised 54794
989.224 Removed 52377
989.232 Added 63882
989.328 Added 60559
989.401 (a)(1) amended; (b) and (c) revised 52377
989.601 Table revised 52378
989.701 Undesignated center heading and section added 52378
989.702 Added 52379
991.215 Added 18857
991.312 Added 47185
993.213 Added 49802
993.328 Added 44802
993.404 Added 49802
999.100 (b)(1) revised 35146
999.400 Added; eff. 2-15-78 64899

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905.120 Revised 9455
Authority citation correctly added 52197
905.146 Added 9455
Authority citation correctly added 52197
Introductory text and (a) revised 54218
905.147 Added 9456
Authority citation correctly added 52197
905.148 Added 9456

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Authority citation correctly added 52197
905.150 Added 32397
905.152 Added 32397
905.216 Added; eff. 8-1-77 to 7-31-78 2385
905.217 Added 57140
905.301 (a) and (b) tables amended; (c) revised; eff. 1-16-78 to 9-24-78 2821
(a) and (b) tables amended; eff. 2-6 and 9-24-78 5498
(a) table amended 10901, 20475
(a) and (b) tables amended 17797, 24821, 29525
905.302 Added 43014
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(a) table I amended 53028, 59335
(d) redesignated as (e); new (d) added 54617
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906.218 Added 43703
906.340 (a) introductory text, (1), and (3) revised 51000
906.360 (a)(4) revised 4033
906.361 Added 50866
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907.215 Added; eff. 11-1-77 to 10-31-78 4966
907.719 Revised 753
907.722 Revised 753
907.727 Added; eff. 2-3 to 7-13-78 3897
908.217 Added 19643
908.876 Added; eff. 3-3-78 to 4-13-78 8785
908.881 Added; eff. 3-31-78 to 1-15-79 13492
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909.217 Added 57582
910.120 Revised 43016
910.153 (e)(3) amended; eff. 1-1-79 to 7-31-79 60864
910.216 Added 39319
910.463 Added; eff. 9-24-78 to 9-22-79 41950
911.12 Added 39320
911.20 Existing text designated as (a); (b) added 39320
911.30 (a) revised; (d) added 39320
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911.54 Revised	39321
911.55 (d) revised	39321
911.110 Introductory text and (c) revised	39321
911.130 (a), (b), and (c) amended	39321
911.217 Added	28433
911.311 (a)(2) introductory text amended	39321
911.340 Added; eff. 5-1 to 6-23-78	16149
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912.217 Added; eff. 8-1-77 to 7-31-78	2385
912.218 Added	57140
913.213 Added; eff. 8-1-77 to 7-31-78	2385
913.214 Added	57140
915.12 Added	39322
915.20 Existing text designated as (a); (b) added	39322
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915.42 (a)(2) revised	39323
915.51 (a)(7) added	39322
915.140 (d) added	23557
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915.217 Added	28433
915.320 Added	22660
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916.216 (a) revised; eff. 3-1-77 to 2-28-78	2385
916.217 Added	30267
916.352 Added	20219
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917.122 (a) revised; eff. 1-15-79	58355
917.217 (a) revised; eff. 3-1-77 to 2-28-78	2385
917.218 (a) revised; eff. 3-1-77 to 2-28-78	2385
917.219 (a) revised; eff. 3-1-77 to 2-28-78	2385
917.220—917.222 Added	30267
917.446 Added	20220
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917.447 Added	21637
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917.448 Added	29564
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918.112 Added	47486
918.216 Added	25331
918.320 Added	18642
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921.317 Added	28996
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922.218 Added	28996
922.318 Added	28434
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923.218 Added	28996
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924.316 Added; eff. 7-25-78 to 8-31-79	31001
926.218 Added	37981
926.315 Added	35259
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927.218 Added	39323
927.317 Added	31120
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928.207 Added	1785
928.208 Added	58176
928.308 (a)(1) revised	46955
929.20 Introductory text amended	29765
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929.32 (a) revised	29765
929.48 (b) revised	29765
929.56 (d) revised	29765
929.105 (b) revised	29764
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929.152 Added	29764
929.219 Added	46831
930.107 (a) revised	8116
930.208 Added	34104
931.213 Added	39323
932.153 Revised	39744
932.211 (a) amended	24822
932.213 Added	43704
944.18 Added	22665
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944.102 Added	43015
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944.205 (a) introductory text and (2) revised 16150
(a) introductory text revised 22002
944.400 Added 19340
945.231 Added 28808
945.336 Removed 31121
945.337 Added 31121
(a)(2) revised 33677
946.104 (a) (1) and (2) revised; eff. 7-1-79 52199
946.231 Added 31882
946.332 Removed 31123
946.333 Added 31123
947.230 Added; eff. until 6-30-78 12845
947.231 Added 31314
947.336 Removed 32119
947.337 Added 32119
948.279 Added 26689
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948.379 Added 29266
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953.215 Added 21638
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958.222 Added 31125
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959.218 Added 1475
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959.318 Added 4587
965.150 Added; eff. 8-1-79 47486
965.151 Added; eff. 8-1-79 47486
966.317 Added 46832
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967.314 Added 35019
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971.318 Introductory text amended 2386, 5499, 13055
971.319 Added 53704
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981.328 Added 36593
981.442 (a)(5) revised; (a)(6) removed; (a)(7) redesignated as (a)(6) 47969
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982.228 Added 57240
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987.33 Amended 4252
987.34 Revised 4252
987.38 Added 4252
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987.43 Added 4252
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987.104 Added 28435
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987.112—987.112a Undesignated center heading added 28436
987.112 Added 28436

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987.124 Section and undesignated center heading added....28437
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989.701 (g) added....13493
989.702 (d) amended....13493
989.703 Added....47971
991.216 Added; eff. 8-1-78 to 7-31-79....10903
991.313 Revised....36044
993.128 Revised....5355
993.149 (c)(2) amended....40199
993.214 Added....33229
993.329 Added; eff. 8-1-78 to 7-31-79....32399
999.300 (a)(2) and (b)(1) amended; (a) (5) and (6) and (b)(5) revised; (a)(8) and (b)(6) added....47972
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906.340 (a) introductory text, (iv), (v), and (ix) revised....55550
906.326 Added; eff. 11-5-79 to 12-31-79....62476
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907.166 Added....48645
907.216 Added....10499
907.771 Added....75377
908 Limitation of handling....20396, 21761, 23237, 24559, 25834, 27405, 28775, 30071, 31161, 32637, 34097, 36167, 37597, 39152, 40631, 42205, 53711, 45359, 46777, 47917, 49415, 50803, 51968, 53155, 54453, 55551, 57065, 58680, 60070
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910 Limitation of handling....30, 1366, 2568, 3956, 5641, 6706, 8240, 10051, 10-717, 11746, 12953, 15993, 17712, 20628, 21761, 22037, 23514, 24263, 24853, 26058, 27644, 29034, 30314, 31610, 33049, 34465, 36361, 37902, 39371, 40879, 42669, 44143, 45595, 47039,

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910.463 (a) revised	29867
910.517 Added; eff. 10-28-79 to 12-8-79	61578
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911.160 Added	9370
911.218 Added	40879
911.341 Added	24561
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912.120 Introductory text, (a), (d), (e), and (f) revised	31611
912.219 Revised	69918
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